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ABSTRACT

The papers in this volume were prepared as part of an evaluation of the effects of the strict 1973 New York State drug laws. The first paper explores the effects of the laws on heroin use. It analyzes the trends of various indicators of heroin use in New York State over a period of several years. In order to isolate movements unique to New York, these trends are compared with those of comparable indicators for other East Coast states and cities that were not directly affected by the new drug laws. The second paper is on crime committed by narcotics users in Manhattan. It presents the findings of a study of changes in the magnitude of felony crimes committed by narcotics users in Manhattan between 1971 and 1975. The crimes included are all felonies which directly affect victims. The third paper explores the effects of the 1973 drug laws on the New York State Courts. It is concerned primarily with implementation of the statutes dealing with possession or sale of dangerous drugs. The last paper is on sentencing patterns under the 1973 New York State drug laws. (Author/JEL)

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Staff Working Papers of the Drug Law Evaluation Project

A Companion Volume to the Final Report of the Joint Committee on New York Drug Law Evaluation

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March 1978

National Institute of Law Enforcement and Criminal Justice
Law Enforcement Assistance Administration
United States Department of Justice

National Institute of Law Enforcement
and Criminal Justice
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FOREWORD

When the New York State Legislature passed the 1973 drug law, the effects of which are evaluated in this study, the legislators hoped to stem the tide of widespread drug abuse and related socioeconomic effects that had not been notably checked by many years of prior national, state, or local control efforts.

The results, documented in this report, form an absorbing chapter in the continuing history of how societies have attempted to control crime by different strategies. Only recently, however, have societies tried consciously and systematically to evaluate how well their strategies have worked, or how and why they have failed to work. Intensive broad-based evaluations of the impacts of public policy changes are still relatively rare, probably because they tend to be costly, complex, time-consuming (and therefore often untimely), difficult, and likely to produce results that can be disquieting to all of the segments of society involved.

When the National Institute undertook this evaluation we recognized that any single study could not even hope to address, let alone resolve, all the research issues about legislative implementation processes and the impacts of this particular law that might be of interest for national, state,and local policy perspectives.

The evidence of this study and the daily newscasts indicate that the drug abuse problems this law addressed are still with us. If the New York drug law and the attendant efforts by criminal justice system administrators have not eliminated these problems, we know now, as a result of this evaluation, what it was that was done, why it was done, what effects it had, and what results were achieved. In short, we have increased the understanding which all of us have of a complex set of problems and of the difficulties which inhere in attempts to solve them. The continuing development of such knowledge and understanding is the best basis on which we can build future policies directed toward enlightened and effective control of drug abuse problems.

Blair G. Ewing
Acting Director
National Institute of Law
Enforcement and Criminal
Justice

PREFACE

This volume is being made available in conjunction with the Final Report of the Joint Committee on New York Drug Law Evaluation. The Committee was established by The Association of the Bar of the City of New York and the Drug Abuse Council, Inc. to conduct an evaluation of the strict drug law enacted in New York State during 1973. It is the Committee's hope that the data and methodologies presented in the four staff papers will contribute to research and analysis of the issues related both to controlling illicit drug use and operating criminal justice systems.

The Committee's Final Report, The Nation's Toughest Drug Law: Evaluating the New York Experience, as well as an Executive Summary presenting the Committee's conclusions, is also published by the Government Printing Office.

The papers included in this volume were prepared during the course of the Drug Law Evaluation Project. In some cases, the Final Report of the Joint Committee on New York Drug Law Evaluation includes revisions or refinements of the materials included in this volume. Information which became available after the preparation of the staff papers is also incorporated into the Final Report.

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1

THE EFFECTS OF THE 1973 DRUG LAWS ON HEROIN USE IN NEW YORK CITY

A Staff Working Paper
of the
Drug Law Evaluation Project

This paper was prepared by Majda I. Sajovic and R. Matthew Goldsmith, with the assistance of Jack Albert Shemtob.

January 1977

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INTRODUCTION

The New York State drug and sentencing laws enacted in 1973 increased the penalties for many crimes involving the sale or possession of drugs. The laws were intended to reduce the extent of illicit drug use and the number of street crimes users commit.

This report focuses on the impact the laws have had on heroin use patterns by analyzing the trends of various indicators of heroin use in New York State over a period of several years. In order to isolate movements unique to New York, these trends are compared with those of comparable indicators for other East Coast states and cities that were not directly affected by the new drug laws.* Reliance upon selected indicators to measure changes in heroin use is similar to the procedure followed by the National Institute on Drug Abuse in developing national data for use in public policy analysis and formulation.**

None of the available indicators of heroin use can be used to estimate the number of addicts in a location because the quantitative relationship between indicator levels and the number of heroin users is unknown. Furthermore, no one indicator can stand alone in reflecting changes in heroin use, since each is influenced by factors other than heroin use. However, when analyzed as a group for common trends, and when used to depict trends in heroin use, the composite picture that results is the best that can presently be obtained. Throughout this report, most emphasis is placed on serum hepatitis and narcotics deaths as the best of the available indicators. In nearly every jurisdiction, these have been examined, supplemented whenever possible by other available data. However, it is unusual for any city or state to have more than one or two reliable indicators available over a period of several years.

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*Drug laws in the comparison states remained largely the same from 1970 to 1975. In Connecticut, tighter penalties were imposed in 1971 but were liberalized again in 1974. A reduction of penalties for drug crimes in Pennsylvania in 1972 was the only other change.

**National Institute on Drug Abuse. Heroin Indicators Trend Report. Washington, D.C.: United States Department of Health, Education and Welfare, 1976. (Publ. No. (ADM) 76-378 and Publ. No. (ADM) 76-315)

The findings described in this report must be interpreted with some caution as a general reading of the changes in narcotics use in New York compared to other areas. The limitations of the accuracy of the major drug use indicators are well known.* While most of the indicator data considered here are thought to be specifically heroin-related, some also involve the use of other narcotics, chiefly methadone. This is most clearly the case for narcotics deaths in New York City. Use of illegal methadone is a problem largely confined to New York City, so that in other areas the term narcotics is generally synonymous with heroin.

The indicators used in this study** and their anticipated relationship with heroin use are as follows:

Narcotics-Related Deaths: Deaths due to narcotics use are a rough measure of the prevalence of narcotics use. They also are thought to be related to the purity of street heroin. A decrease in narcotics deaths can be interpreted as a decrease in use, either because the number of active narcotics users is dropping or because the purity of street heroin is declining, or both.

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*See Appendix A for a detailed discussion of the indicators.

**The sources of all the data collected and used in this report are listed in Appendix B.

Serum Hepatitis Cases: Drug users may contract serum hepatitis if the needle they use to inject a drug is not sterile. This disease usually occurs within the first year or two of drug use and is believed to be an indicator of the number of people beginning to use heroin regularly. A decrease in reported cases of serum hepatitis would indicate that fewer young people are beginning to use heroin regularly.

Emergency Room Mentions: Reports of narcotic drugs mentioned during visits to hospital emergency rooms are collected as part of the Federal Drug Abuse Warning Network (DAWN) system. They are thought to reflect the availability of illegal narcotics, especially heroin. A decline in narcotic drug mentions would mean a decline in the amount of narcotics available on the street. It probably also would mean a decline in the number of people who were using narcotics on a regular basis.

Treatment Program Admissions: Treatment program admissions probably reflect funding levels for treatment programs more than they reflect changes in narcotics use patterns. They also can be influenced by the policies of treatment programs and by the reporting systems that are used. Furthermore, drug-free treatment programs often enroll clients who are not narcotics users. Nevertheless, the most reliable treatment admissions data available are presented on the assumption that long-term increases in admissions may reflect increases in the number of drug users. Most often these are data from methadone treatment programs. The age distribution of admissions to methadone programs and the proportion of patients admitted for the first time have been analyzed when possible as a rough gauge of incidence of heroin use.

Heroin Purity: Short-term changes in purity of heroin sold on the streets probably reflect shifts in supply conditions: a sharp rise in purity can be associated with an increase in supply and vice versa. Pronounced changes in purity are also thought to be related to changes in the number of narcotics deaths and narcotics-connected emergency room incidents.

Interpretations of long-term movements of purity are difficult because they are the result of changes in demand as well as supply conditions.

Property Crime Complaints: Property crime complaints appear to be only distantly related to narcotics use. The 1971 heroin epidemic, for instance, did not result in a dramatic increase in the rate of such complaints in most states.

Nevertheless, if the drug laws were unusually effective, they would probably have a moderating influence on property crimes. For this reason, the property crime complaint rate is presented as background material.

SUMMARY OF CONCLUSIONS

1. According to the most reliable indicators, narcotics use in New York City had been declining for a year or two before the 1973 drug laws were introduced. Since the introduction of the new laws in early 1973, narcotics use has been relatively stable at levels far below the epidemic levels reached in the early 1970s. There has been neither a significant increase nor decrease in narcotics use since the introduction of the 1973 drug laws in New York State.

2. The stability of narcotics use since 1973 does not represent a departure from long-term narcotics use patterns for New York City.

3. Opinions of both law enforcement officials and drug treatment program administrators confirm that narcotics use in New York City appears to be no more or less widespread now than it was when the 1973 laws were first introduced.

4. There is substantial consistency among the movements of the indicators of narcotics use in New York City over the entire 1970 to 1975 period. This consistency lends confidence to the results.

5. When compared to patterns of heroin use in other East Coast jurisdictions, the uniform stability of the New York City indicators since 1973 stands out:

(a) A direct comparison with heroin use patterns in Washington, D.C. suggests that heroin use in Washington has been increasing slowly but steadily since 1973. The comparison between New York and Washington is thought to be reliable because data for these two cities are the most comprehensive.

(b) Results for other jurisdictions are less conclusive, with some indicators showing similarities and others showing differences from the stability in New York City.

6. The contrast between the stability of narcotics use in New York and the steady increase in use in Washington, D.C. might be attributable in part to the introduction of the 1973 laws in New York, but there is no direct evidence to support such a relationship. When compared with other cities, Washington is as much a special case because of its uniform increase in use as New York City is because of its stability. Indeed, changes in the indicators of heroin use in Washington, D.C. resemble closely changes in comparable indicators for Chicago, a city thought to be subject to different market conditions than eastern locations.

7. Very limited data suggest that areas of New York State outside New York City have not shown significant changes in heroin use patterns that can be attributed

to the new drug laws.

8. Statewide trends in narcotics use showed no significant changes associated with the 1973 drug laws. Patterns of use in New York State have been similar to patterns exhibited by other East Coast states.

SUMMARY OF METHODOLOGY

Analyzing long-term narcotics use trends in New York City (or other jurisdictions examined in this report) is a three-step process.

The first step is to examine each individual indicator in order to compare shifts that occurred after the new laws went into effect with patterns of movement that occurred before the new laws became effective.

The second step is to combine the results of all the indicators within a jurisdiction in order to see if a consensus exists with respect to the general nature of changes that occurred. Since indicators are indirect measures of trends and cannot be used to gauge absolute changes, the more similarity one finds among the interpretations of the movements of individual indicators, the more confidence one can place in the overall result.

The third step is to compare New York State and New York City results with results obtained from an analysis of indicators for other East Coast areas which are demographically similar to New York but which were not directly affected by changes in the New York State drug laws. This is the point at which it is possible to learn whether changes that seemed unusual or unique in New York occurred in the comparison areas as well, or whether some patterns did emerge that were unique to

New York. The comparison areas thus serve as "controls" for factors which may affect the extent of drug use over a wide geographic region.

While long-term analysis is useful for identifying trends that occur over a period of several years, it is not sensitive to short-term changes that occur on a month-to-month or quarter-to-quarter basis. Because policy is sometimes made in response to such changes, an analysis of changes during the post-law period alone in New York City and its comparison cities has also been undertaken. The main concern of this report, however, is with the longer-term movements.*

The principal statistical method used to detect long-term effects of the 1973 drug laws on the indicators of narcotics use was Interrupted Time Series Analysis (ITSA). This technique has been successfully applied to problems of measuring effects of policy changes.** ITSA is a technique which can detect changes in long-term trends of a time series after the intervention of some event. In our case, the event is the effective date of the 1973 New York State drug laws. The technique cannot, by itself, be used to attribute changes in the indicators to the adoption of the 1973 laws, but it can help to isolate such changes from the random ups and downs which the indicators may undergo.

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*The presence or absence of a long-term change was determined by a variety of techniques described in detail in Appendix C. A statistical test of some kind was applied whenever possible, but some of the data were so incomplete that tests were not possible.

**Campbell, D.T. and Ross, H.L. "The Connecticut Crackdown on Speeding: Time Series Data in Quasi-Experimental Analysis." Law and Society Review, Vol. 3, 1968, pp. 33-53; Box, G.E.P. and Tiao, G.C. "Intervention Analysis with Applications to Economic and Environmental Problems." Journal of the American Statistical Association, Vol. 70, No. 349, March 1975, pp. 70-79; Cook, T.D. and Campbell, D.T. "The Design and Conduct of Quasi-Experiments and True Experiments in Field Settings." Handbook of Industrial and Organizational Psychology. Marvin D. Dunnette, ed. Chicago: Rand McNally College Publishing Co., 1976.

ITSA is a conservative technique in the sense that all but persistent deviations of the post-law trend from the pre-law trend will go unnoticed. The most likely error to occur is for the technique to mistakenly report no effects of the laws. In this report, a finding of "no change associated with the passage of the laws" means post-law movements or trends of the indicators were not inconsistent with their pre-law history.

Reliability of results from ITSA depends on having at least 25 data points in both the "before" and "after" time periods. Consequently, only indicators reported on a monthly basis could be subjected to this type of analysis. The statistical analysis has been supplemented by consultations with those most knowledgeable about changes in heroin use, particularly police officials and administrators of drug treatment programs.

HEROIN USE IN NEW YORK CITY

LONG-TERM TRENDS: INCIDENCE OF NEW USERS

Hepatitis

The number of serum hepatitis cases reported per month, the best available indicator of new heroin use, has a history resembling that of an epidemic. The number of cases rose rapidly to a peak in 1971 and fell steeply for the next two years. The number of cases remained stable at a minimum level through 1974. During 1975 and the first half of 1976, the first significant increase since 1970 was recorded (Chart I).

Interrupted time series analysis (ITSA) failed to detect a significant departure in the post-1973 pattern of serum hepatitis from its previously established pattern. This finding suggests that the 1973 drug laws had no significant long-term impact on new heroin use. A brief description of serum hepatitis trends from 1970 to the first half of 1976 will help clarify the statistical result.

The contagious nature of hepatitis introduces a high degree of dependence between the number of cases reported in one month and the number reported in several preceeding months. This dependence is even evident between successive quarterly data, given on Chart I, where trends persist for some time. New cases declined uniformly from early 1972 to about the time the drug laws were implemented in September, 1973, at which time a stable, or refractory, period of five quarters began. If the bulk of the susceptible population had been exposed to serum hepatitis by 1973, a new outbreak of epidemic proportions would not have been likely to occur for some years. In that case, statistical analysis might have reported a significant drop in the level after September, 1973. In reality, the trend of new cases since 1974 has been one of increase with no indication of leveling off. Allowing for an average lag of one year between the onset of regular needle use and contraction of hepatitis, new heroin use may have been increasing since late 1973. Hence, the susceptible population apparently had not been exhausted This recent upturn may not be due entirely to changing patterns of heroin use. Some doctors suggest increased homosexual transmission as one contributing factor.

Treatment Admissions

Another way to measure the effect of the law on the number of new users is with the aid of the age distribution of new admissions to treatment programs and the total of new admissions. Most users probably enter a treatment facility at some time, typically two or three years after they have begun regular use of drugs. By looking at a sequence of age distributions of new admissions, one can see how the user population is changing. If the share of each age group remains constant, then a plausible explanation is a constant influx of new users to match the number who exit the drug using population.

Age distributions of new admissions to all methadone maintenance programs in the City were examined. These programs treat regular users of heroin, and their admissions therefore represent some portion of the heroin addicted sector of the drug using population. No rigorous statistical techniques could be applied to these data, but careful examination suggests the following result (Chart II).

Age distributions from 1970 and 1971 probably do not accurately represent the addict population on the street. The programs were just being established during this time, and emphasis was placed on recruiting older clients. Once the programs were in normal operation, the percentage of addicts over 30 dropped to a level of about 25% and has stayed there until the present time. The most noticeable features on Chart II are the peaking in 1974 of the percentage of new clients in the 21-25 age category and the simultaneous start of a steady increase in the 26-30 age group.

One explanation might be that the large numbers of people who began regular use of heroin during the epidemic of the late 1960s first entered treatment in large numbers in 1972. (Past studies of drug use have shown that new users are predominantly in their late teens or early 20s.) By 1972, this group would be 21-25 years old and indeed this was the largest group to seek treatment for the first time. The 26-30 age group starts increasing in 1974, just when some of the cohort from the epidemic period would have reached this age category.

The new drug laws were expected to drive large numbers of addicts into treatment before the point in their lives at which they might have entered treatment in any case. It was thought that the threat of heavier penalties would provide a strong stimulus to terminate one's narcotics habit. Initially, this would not necessarily change the age distribution of clients entering treatment. But if fewer and fewer young people begin to use drugs, the expected effect would be a long-term increase in the average age of those who enter treatment.

The upward drift in the ages of new admissions to treatment certainly had been in progress before September, 1973, and was therefore most likely caused by phenomena other than the new drug laws.

Nor is it apparent that the laws motivated large numbers of new people to enter treatment. New admissions to methadone treatment declined steadily from 1972 with only a brief interruption in 1974. The new laws may have contributed to this temporary halt in the descent. The free substitution of legal (but less preferred) methadone for heroin may have been an incentive for addicts to enter programs during a brief period of low average street purity of heroin and the possibility of an increased threat of prosecution under the new drug laws.

Taken together with the changes in hepatitis cases, these data do not suggest either a rush to treatment or a long-term interruption of previous trends after the 1973 laws became effective. For the past several years, incidence of new users has been far below the incidence recorded during the heroin epidemic of the late 1960s and early 1970s.

LONG-TERM TRENDS: PREVALENCE OF USE

Deaths

Narcotics deaths and treatment admissions data have been used as measures of prevalence (magnitude) of narcotics use. The death data should be given more attention than the admissions figures, because the latter are subject to many factors not directly related to narcotics use (funding levels, accuracy of records, program build-up, admissions policies).

Analysis of narcotics deaths from 1970 to 1976 has produced no statistically significant decline dating from September, 1973. A reading of Chart I bears out this finding. A decline was in fact detected but it was not quite vivid enough to have met the criterion of statistical significance.

The number of narcotics deaths had been decreasing for nearly two years prior to the middle of 1973. At this point the trend reversed itself and for three quarters death figures climbed as steeply as they had descended in the past. The increase stopped after the first quarter of 1974, several months after implementation of the law. From this point until 1976 there is general decline, but too gradual to be clearly attributable to an effective drug law. Indeed, deaths from narcotics during the first months of 1976 differ little in number from the months immediately preceeding intervention of the drug laws.

Total Admissions to Treatment

Total admissions to all methadone clinics in the City were examined as a prevalence measure.* There was a slight increase in admissions to methadone maintenance programs during 1974 which constituted a change from the previous decline. The increase might reflect a short-term incentive to enter treatment produced by the new laws. However, the increases did not persist long enough to be statistically significant, and no long-term changes originating in late 1973 were detected.

Analysis of admissions to ambulatory detoxification centers reveals a stable number of total admissions and a gradually declining number of new clients since the third quarter of 1973. The decline in new admissions is less a sign of new law effectiveness than the result of the fact that these out-patient programs most often draw clients from their surrounding neighborhood, and the longer a program is in operation, the more likely it is that particular individuals in that neighborhood will already have entered treatment at least once. There were no large, short-run increases in either category immediately after September, 1973.

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*The age distribution of new admissions is described above as an indicator of incidence of new narcotics use.

Neither this information from treatment programs nor the available data concerning narcotics deaths indicate a significant shift in the long-term pattern of prevalence of narcotics use in New York City.

SIMILARITY AMONG THE NEW YORK CITY INDICATORS

The findings of this report are strengthened by the fact that the movement of all of the narcotics use indicators for New York City have similar interpretations. The indicators, taken together, provide a picture of narcotics use which peaked before 1971 and fell rapidly for two years afterward. Excluding serum hepatitis, the indicator movements show stability or slight declines since 1973. The rise in the number of serum hepatitis cases in 1975 and the first half of 1976 represents rising use in 1974 or earlier, but it must be viewed cautiously because it is the only indicator to show an increase during this period, and in any case the increase was not found to be statistically significant.

For each of the indicators, statistical analysis showed that post-law, long-term trends are not out of context with pre-law trends. Short-term trends are described below, and there is some evidence which suggests a temporary effect of the drug laws on narcotics use trends in 1974.

COMPARISON WITH OTHER JURISDICTIONS: LONG-TERM CHANGES

Narcotics use patterns in New York City were compared with those of other large East Coast cities. Baltimore, Philadelphia, and Washington, D.C. were chosen because they are demographically similar to New York and because they are thought to be in the same heroin distribution network as New York City. Boston has also been included in the New York City group because it is a vital East Coast city. Of these cities, Washington provided the most complete and reliable data.

The indicators for each city were subjected to time series analysis. The movements of the indicators in Washington, Baltimore, and Boston since late 1973 were not found to be inconsistent with their respective histories (Charts III-V). In Philadelphia, the level of serum hepatitis was found to be significantly lower after late 1973 than before (Chart VI). In Chicago, a city which contrasts with New York because it is part of a different heroin distribution system, hepatitis cases showed a statistically significant increase beginning in March, 1974 (Chart VII). These results suggest that the absence of a long-run change in New York was not entirely unusual among East Coast cities. Further search for unique effects of the 1973 drug laws in New York City must focus on short-term comparisons.

COMPARISON WITH OTHER JURISDICTIONS: SHORT-TERM CHANGES

A direct comparison between post-1973 trends in New York City and those in Washington highlights the stability in New York. This suggests that the drug laws may have had a damping effect on narcotics use in New York City. From the other East Coast cities come less complete and reliable data. Their movements provide conflicting evidence for crediting tough drug laws for the apparent stability in New York. Indeed, Washington is as much an anomaly in its uniform increases as New York City is in its steady state. Further, since 1973, the history of the indicators in Washington appear more akin to that of the indicators in Chicago (Charts I, III and VII).

The results from Washington provide a picture of steadily increasing heroin use since 1973, a finding confirmed by law enforcement and treatment program officials there (Chart III). The pre-law histories of narcotics deaths in New York and Washington are much alike, but since September, 1973 these deaths increased steadily in Washington. In New York City they declined gradually (Chart VIII). Total admissions to all modes of treatment in Washington show a similar pre-law pattern to those in New York City. After 1973, they increased in Washington, while in New York they declined.

Emergency room mentions in Washington changed little during their recorded history, 1973-1975, while the serum hepatitis case rate has been increasing since 1966 when data for this indicator were first available. The serum hepatitis level was stable in New York City during 1974 (Chart IX). Unlike New York City, Washington apparently experienced no epidemic outbreak of the disease before 1973 despite a narcotics death rate which was comparable to New York City's. Narcotics deaths in Washington between 1970 and 1973 were much higher than cases of hepatitis, lending some suspicion to the adequacy of the hepatitis data (Chart III).

The consistent directions of the indicators in Washington since 1973 present a picture of a growing heroin use problem, a growth that is not found in New York City.

Results from other East Coast cities vary in their contrast to New York. Narcotics deaths in Baltimore decline from a peak in 1971 as they do in New York (Chart VIII). In fact, Baltimore has registered a small, but statistically significant decline in narcotics deaths since 1973. The patterns of serum hepatitis in the two cities diverge after 1973. Marked increases in 1974 occur in Baltimore that are not present in New York (Chart IX).

Unfortunately for the purposes of this report, Philadelphia has available only one indicator, serum hepatitis, that is directly comparable to any of the indicators from New York City (Chart IX). These data, together with deaths from all drugs (rather than just narcotics deaths) and consultations with treatment program officials there, suggest an epidemic of narcotics use and subsequent rapid decline at about the same time they occurred in New York City. After 1973, there was a rise to a moderate but steady level of heroin use.

Data from Boston are presented on Chart V. According to these data, Boston has experienced a considerably different history of heroin use than New York, preventing more than a superficial comparison.

The Drug Enforcement Administration (DEA) provided a yearly breakdown of the sources of a sample of the heroin seized in East Coast cities since 1972. This information was analyzed for evidence of the separate interdiction effects of the Turkish opium ban and the New York State drug laws. The data give some indication that New York City was among the last of these cities to enter the market for Mexican heroin. This conclusion cannot rest on these data alone for, as the DEA has pointed out, rigorous sampling methods were not used to extract the data. However, police officials in New York confirm the late entry of Mexican heroin into the City.

Because information about heroin purity is available only since late 1973, it cannot be used to infer any results of the 1973 drug laws, but it was utilized for comparing inter-city supply conditions since that time. In general, the series on heroin purity appear to move in similar fashion to other indicators of heroin use within each of the jurisdictions.

These post-law comparisons between East Coast cities support -- but do not prove -- the following scenario:

The gradual increase in the comparison cities' indicators occurred because the Turkish opium ban, which had played a major role in the downward trend of heroin use during the pre-law period throughout the East Coast, had run its course by the end of 1973. Mexican heroin had been introduced into some other cities on the East Coast by that time. The level of heroin use in New York City remained relatively unchanged because the new drug laws, which were introduced at the time the impact of the opium ban had diminished, were able to achieve a stabilizing effect in 1974.

If this interpretation is correct, the vigorous advertising campaign which accompanied passage and implementation of the new drug laws had enough of an effect on drug users to influence the course of narcotics use for some months. Enforcement and treatment program officials around the State are in broad agreement that heroin sellers were very cautious in the fall of 1973. Transactions were more discrete than before, moving from street corners to hallways and rooms. Sellers were also reluctant to deal with anyone other than well-established customers. The slight increase in methadone program admissions occurred at roughly this time as well. With the passage of time, street level heroin users and dealers realized that the threat of the new laws was more theoretical than real. The police were not making street arrests on a large scale and the courts were having trouble with implementation.*

This sequence of events cannot be ruled out, but the long-term analyses, which we think are most appropriate for determining effects of the laws, do not show a significant interruption of pre-law trends associated with the 1973 drug laws.

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*See "The Effects of the 1973 Drug Laws on the New York State Courts" in this volume.

HEROIN USE IN NEW YORK STATE

New York City is the center of the New York State heroin trade, and one would expect that statewide drug use patterns would show general similarity to the New York City trends.

This proves to be the case when the indicators for the entire State are examined. The decline in narcotics use that occurred in New York City between 1971 and 1973 is also evident statewide, although the decline in serum hepatitis is not as pronounced. The two available indicators strongly suggest that heroin use had been declining for at least a year prior to the introduction of the new laws (Chart X).

Long-term analysis of these indicators revealed no evidence of significant change in the patterns of heroin use during the post-law period compared with pre-law patterns. New York State was not unusual in its lack of long-term change. Each of the available indicators from comparison states has been analyzed, and none of them showed trends which were detectably interrupted in late 1973. Thus, on a statewide basis, these findings do not suggest a significant impact of the new drug laws.

Cases of drug-related hepatitis in the comparison states closely followed the pattern found in New York State as a whole. Almost every state considered in the analysis, as well as the entire United States, experienced declines after 1971. None has since returned to these peak levels, although Maryland and Connecticut have moved more in the direction of these levels than Pennsylvania, Massachusetts or New York (Chart XI). This evidence supports the conclusion that despite some differences among the states, post-law changes are consistent with changes which occurred prior to 1973. This is true both for New York State and its neighbors.

Deaths from narcotics in New York State have generally declined since the 1971 peak. Analysis showed that this trend cannot be associated with the intervention of the laws, and in fact, deaths underwent a temporary increase immediately after the third quarter of 1973. Deaths in Maryland exhibited a drop in the post-law period compared to the pre-law period, while Pennsylvania and Massachusetts showed no significant changes. Compared to these other states, then, New York does not show a marked decrease in deaths (Chart XII).

Property crime complaints in New York and the comparison states also exhibit similar trends (Chart XIII). All have shown similar movements since 1960, and since 1970 it is hard to recognize any differences between the states. A truly effective drug law might have produced some decline in property crimes relative to other jurisdictions. This would be particularly true if a strong cause and effect relationship existed between heroin use and non-drug crime, or if offenders sent to prison under the drug laws otherwise would have been responsible for many offenses. There is no evidence, however, of a slower rate of growth in New York property crime complaints since the enactment of the 1973 laws.

Results of an earlier study of non-drug felonies attributable to narcotics users in Manhattan indicate that narcotics users have not been responsible for the increases in crime rates since 1971.* The study concluded that a decreasing proportion of serious crimes are attributable to users since 1971. In the face of widespread increases in crime during this period, these results suggest that crime and heroin use may be more independent than popularly thought.

Examination of the post-law period alone reveals some differences between New York State and other states. Narcotics-related deaths in New York State have remained stable since 1973, as they have for the most part in the comparison areas. Drug-related hepatitis cases increased in Maryland and New York, decreased in Pennsylvania and remained the same in Massachusetts during this period (Charts XI and XII). Thus the New York rate increased compared with the rates in two other states, a result which is not consistent with a successful New York drug law.

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*See "Crime Committed by Narcotics Users in Manhattan" in this volume.

HEROIN USE IN AREAS OF NEW YORK STATE OUTSIDE NEW YORK CITY

In order to determine if heroin use trends outside New York City were influenced by the laws, data from specific cities and counties within the State were needed. An effort was made to collect data from these target areas and from sites picked as out-of-state comparisons. Infrequent observations and short time series from these cities and counties precluded the application of statistical techniques. This also made a casual reading of the data difficult, and we were unable to conduct productive comparisons of local data. In the aggregate, however, the areas of the State outside New York City showed no significant changes in narcotics deaths or serum hepatitis that can be associated with the drug laws (Chart XIV).

These indicators suggest that the pattern of narcotics deaths is considerably different outside the City than it is within it. There was a gradual upward drift from 1970 through the middle of 1975, with no evident epidemic level in the early 1970s as there was in New York City. In contrast, cases of serum hepatitis move in the same fashion outside the City as they do in the City (and in the State as a whole). As is to be expected, the actual rates for both indicators are considerably lower for areas of the State outside the City than they are in the City itself.

The differences between trends in New York City and in the rest of the State indicate that trend analysis in states containing large cities should separate rural and suburban data from urban area data.* Unfortunately, the comparison states do not provide such a breakdown, preventing comparative analysis.

The meager data available for particular sites limit analysis to a cursory examination, from which the following observations can be drawn:

Buffalo's narcotics death and serum hepatitis rates continued pre-law declines in the post-law period. These patterns do not differ greatly from New York City's patterns. Serum hepatitis in Pittsburgh, the one out-of-state area for which there was sufficient comparable data, demonstrated movements similar to the ones in Buffalo.

Nassau County's death rate fluctuated too widely to display any trend, while serum hepatitis declined from 1971 through 1974 and then increased again.

Rochester and Albany, in which only serum hepatitis cases are numerous enough to analyze, show fewer cases since 1972 than before. Wide fluctuations in both series make conclusions difficult.

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*Recent studies by Leon Hunt and others have shown that narcotics epidemics in small cities occur later than those in large cities.

Treatment program and law enforcement officials from the Buffalo and Rochester areas were consulted to compensate for the lack of quantitative information. The consensus in Erie County is that the 1973 laws have not had a marked impact on levels of narcotics use. The laws do appear to have had a short-term restrictive impact on drug traffic in the fall of 1973, much as they did in New York City. However, both drug dealers and drug users soon became aware that the likelihood of arrest and prosecution was not much greater under the new laws than before. Drug users and dealers have perhaps become more circumspect in their transactions but, in general, the level of drug activity reportedly has not diminished. Admissions to drug treatment programs did not apparently increase after the laws came into effect.

In the Rochester area as well, law enforcement officials and treatment program directors agree that the 1973 laws had little noticeable impact on levels of narcotics use. According to these officials, heroin use did not become a serious problem in Rochester until 1967-1968, and levels of heroin use have remained roughly constant since 1971.

In contrast to the Buffalo area, narcotics arrests and prosecutions in Rochester do appear to have increased since the early 1970s, according to law enforcement officials. Narcotics traffickers have become more secretive in their operations but, in general, the increased penalties for narcotics offenses have not acted as an effective deterrent either to narcotics use or distribution. Nor have the new laws encouraged large numbers of drug users to enter into treatment programs.

CHART SECTION

Chart I: Indicators of Narcotics Use -- New York City

Chart II: Age at First Admission to all Methadone Maintenance Clinics in New York City

Chart III: Indicators of Narcotics Use -- Washington, D.C.

Chart IV: Indicators of Narcotics Use -- Baltimore

Chart V: Indicators of Narcotics Use -- Boston

Chart VI: Indicators of Narcotics Use -- Philadelphia

Chart VII: Indicators of Narcotics Use -- Chicago

Chart VIII: Narcotics Death Rates for New York City and Comparison Cities

Chart IX: Serum Hepatitis Rates for New York City and Comparison Cities

Chart X: Indicators of Narcotics Use -- New York State

Chart XI: Drug-Related Hepatitis Rates for New York State and Comparison States

Chart XII: Narcotics Death Rates for New York State and Comparison States

Chart XIII: Property Crime Complaint Rates for New York State and Comparison States

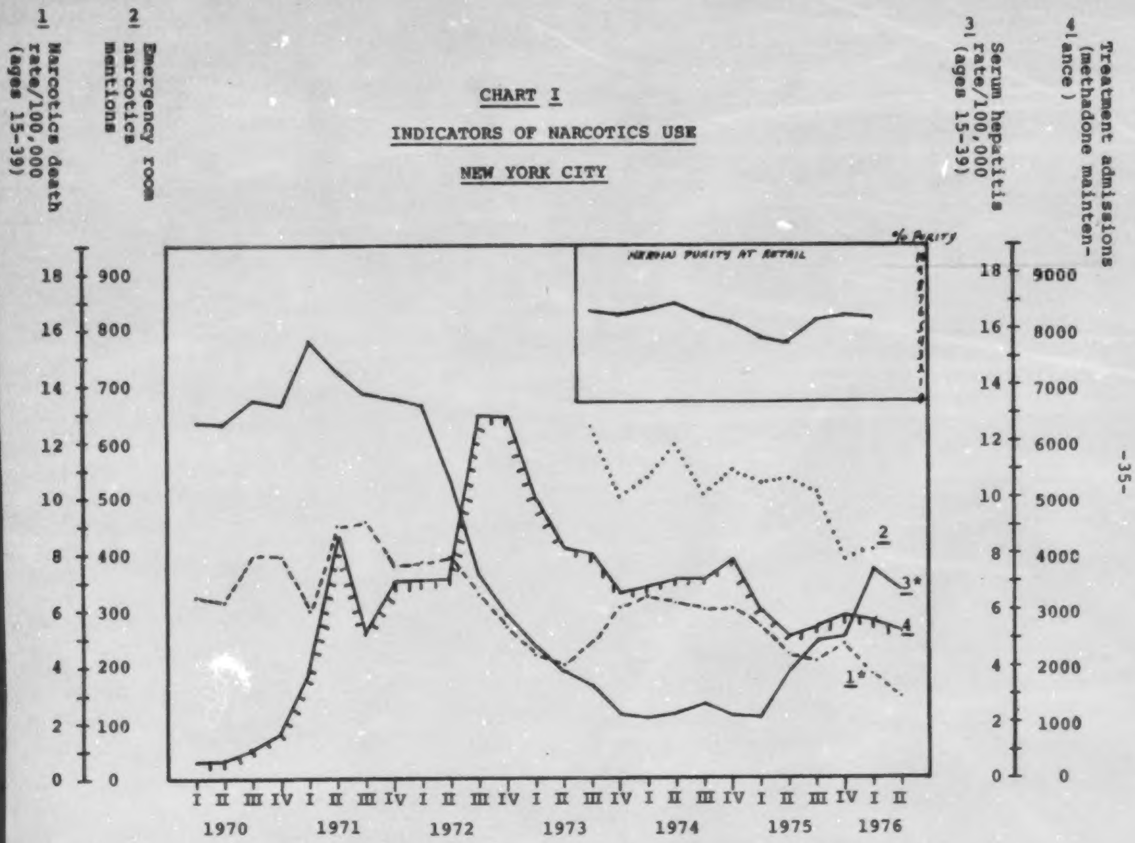
Chart XIV: Indicators of Narcotics Use -- New York State Excluding New York City

Data sources for the above charts begin on Page 48.

CHART I

INDICATORS OF NARCOTICS USE

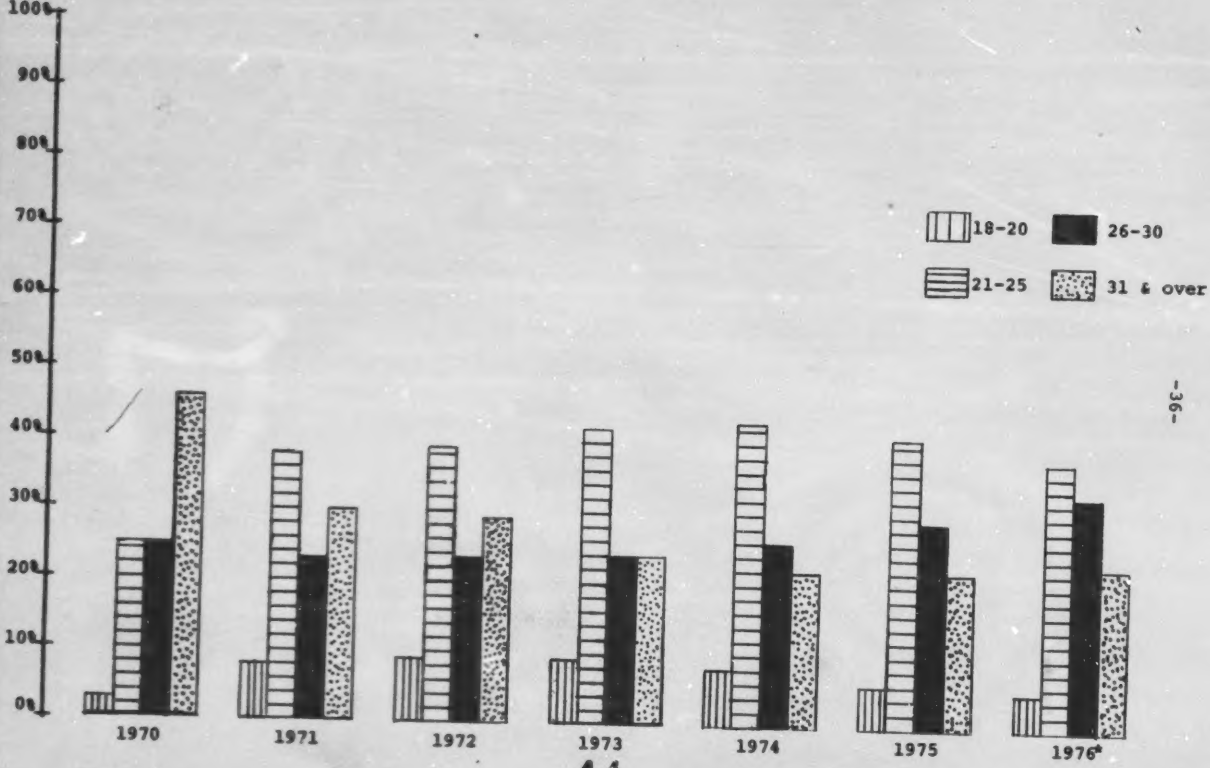
NEW YORK CITY



*1976 figures are provisional.

CHART II

AGE AT FIRST ADMISSION TO ALL METHADONE MAINTENANCE CLINICS IN NEW YORK CITY



*Represents first nine months.

CHART III

INDICATORS OF NARCOTICS USE

WASHINGTON, D.C.

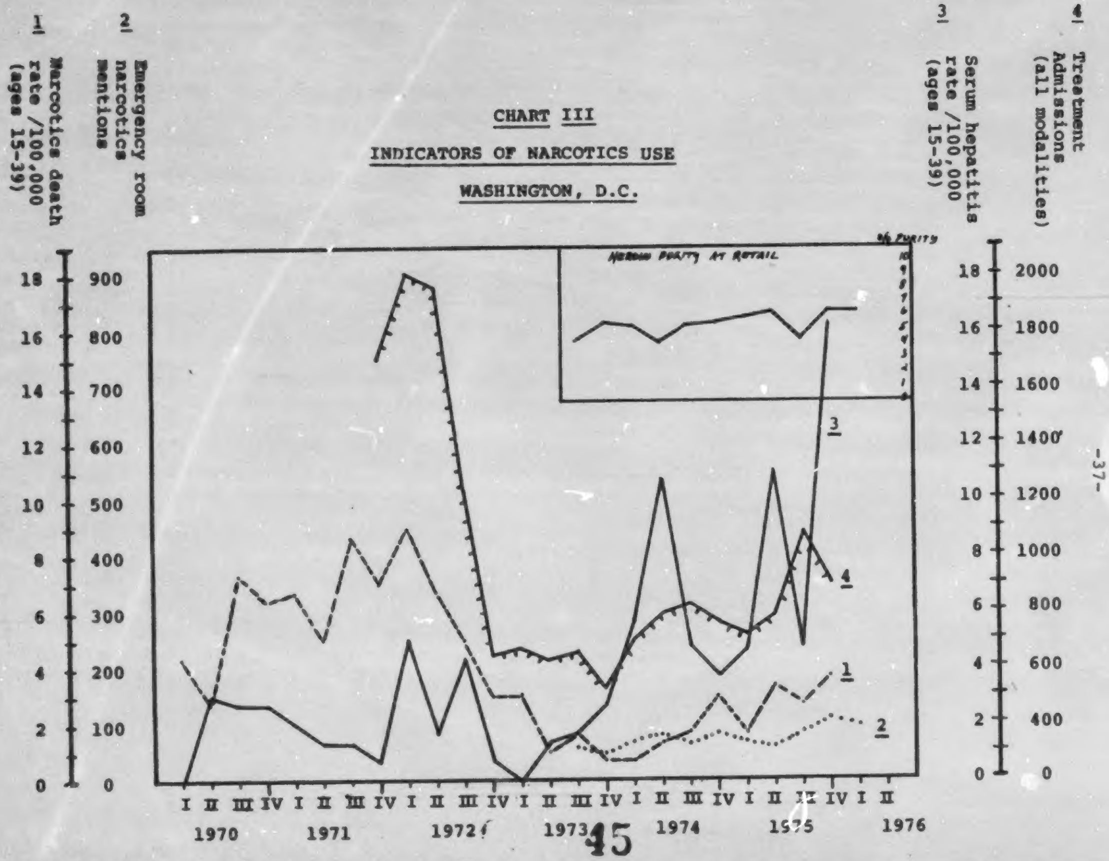


CHART IV

INDICATORS OF NARCOTICS USE

BALTIMORE

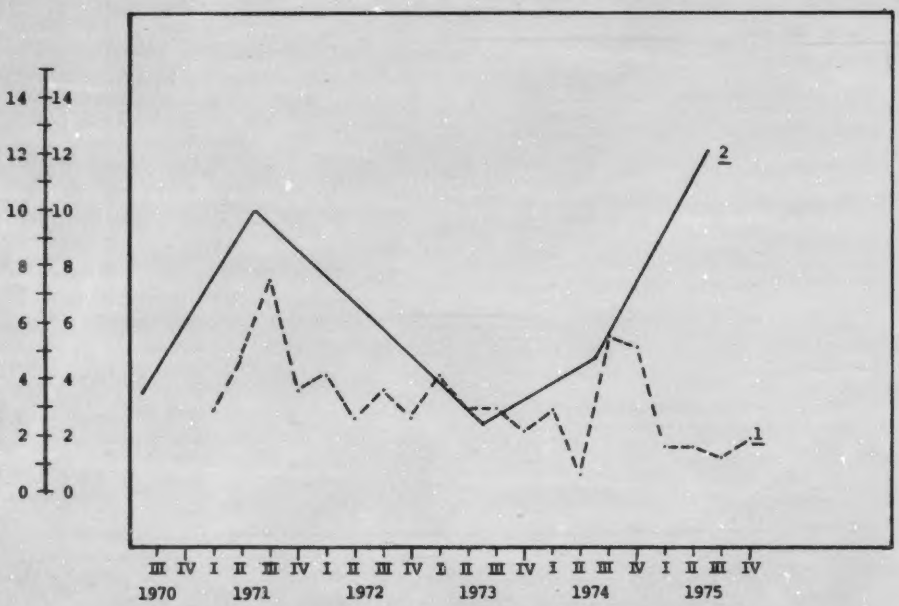
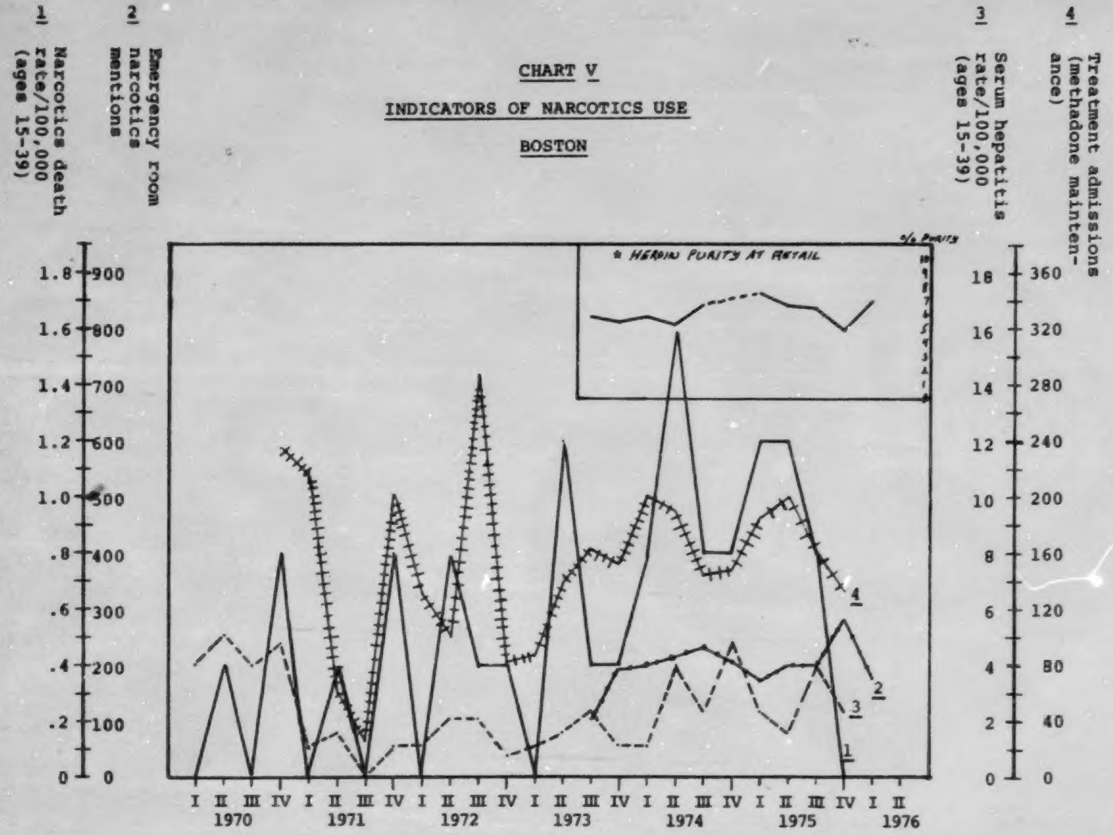


CHART V

INDICATORS OF NARCOTICS USE

BOSTON



*Broken line indicates data not available

CHART VI

INDICATORS OF NARCOTICS USE

PHILADELPHIA

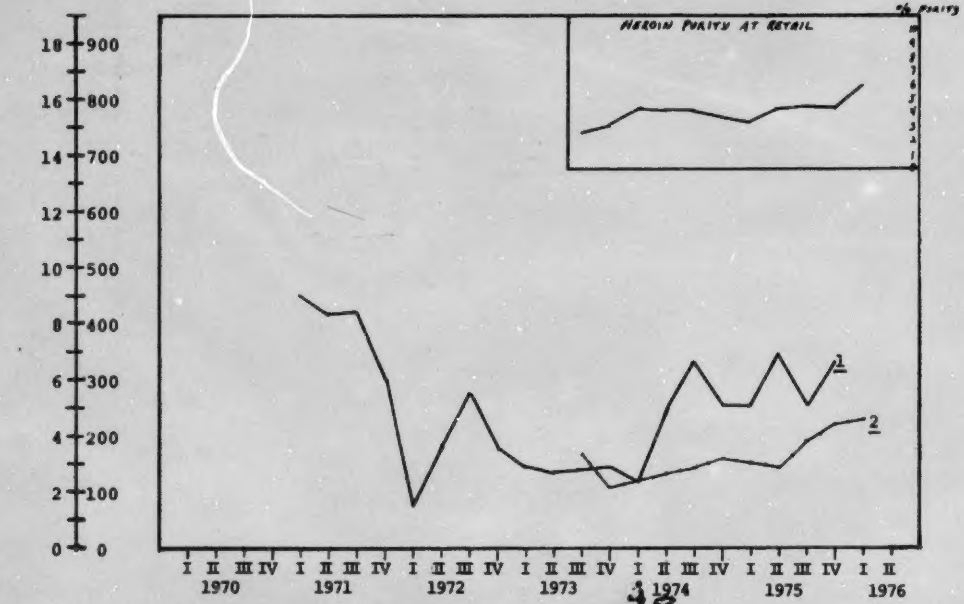
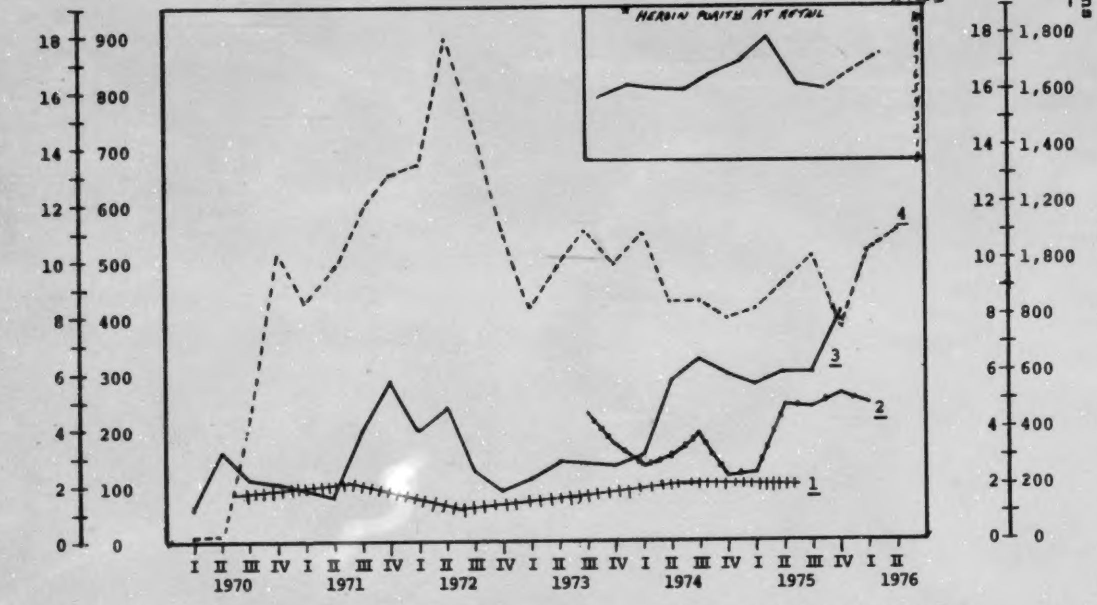


CHART VII

INDICATORS OF NARCOTICS USE

CHICAGO



*Broken line indicates data not available
**Figures for Cook County

CHART VIII

NARCOTICS DEATH RATES FOR NEW YORK CITY AND COMPARISON CITIES

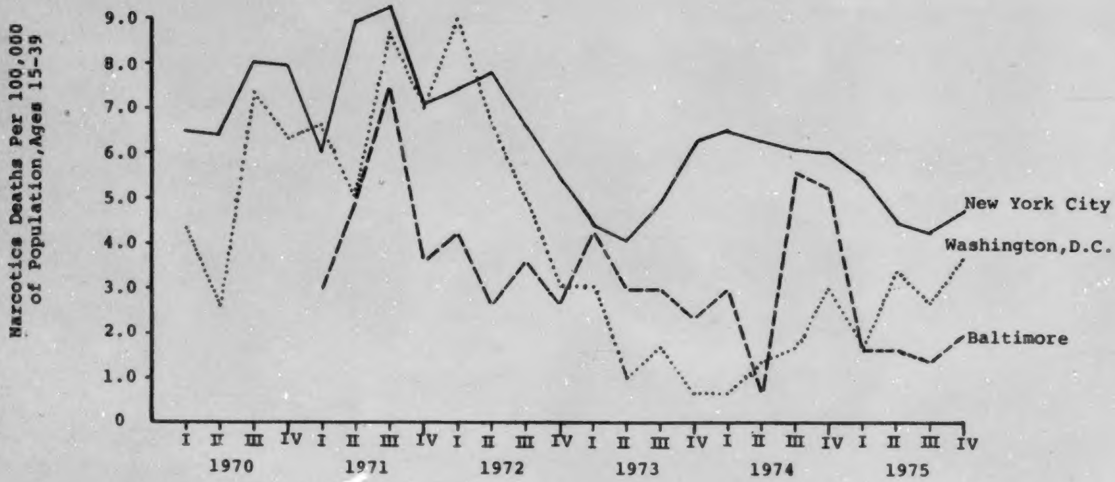
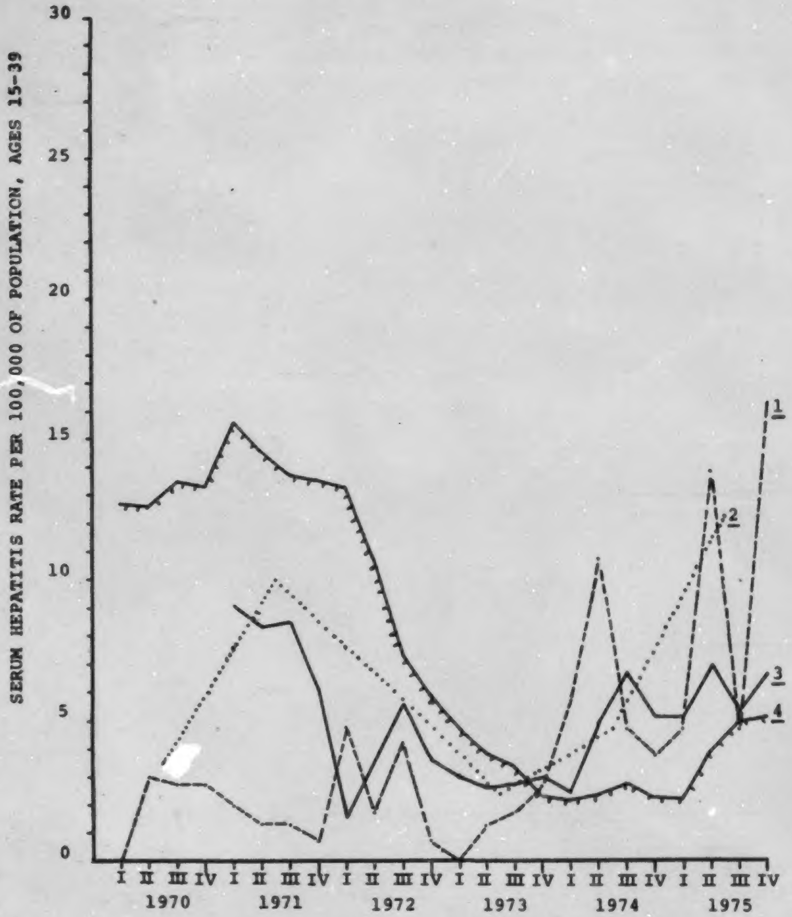


CHART IX

SERUM HEPATITIS RATES FOR NEW YORK CITY AND COMPARISON CITIES

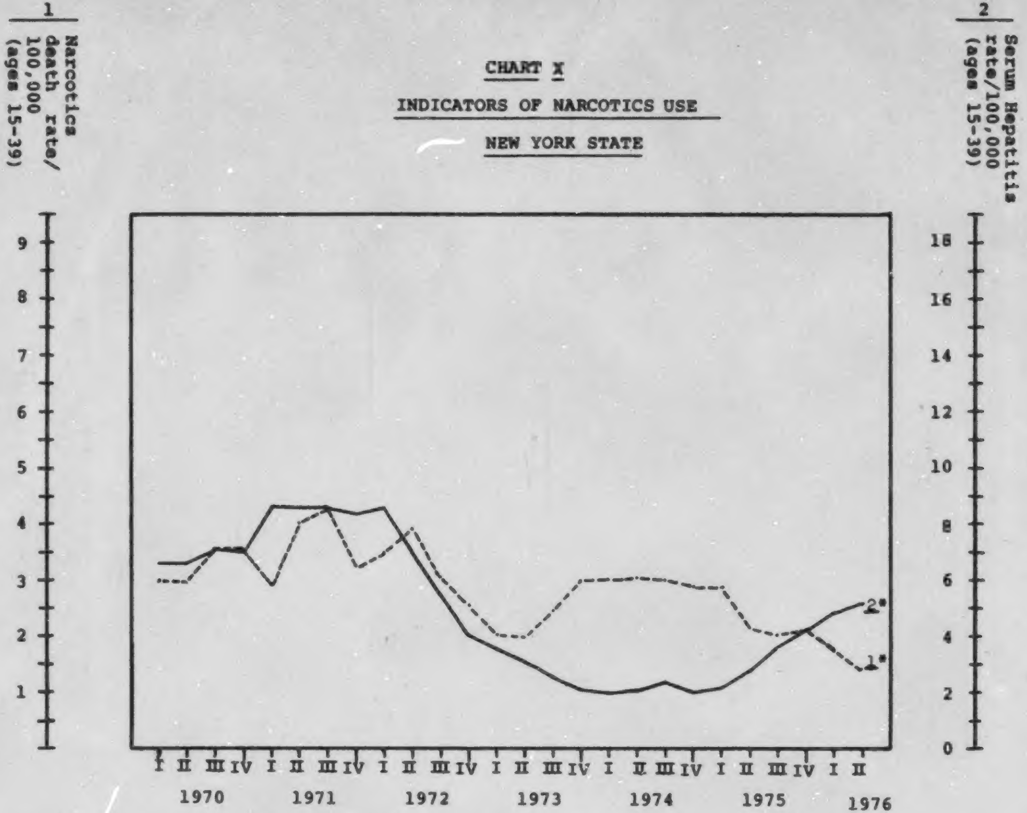


1 Washington D.C.; 2 Baltimore; 3 Philadelphia; 4 New York City

CHART X

INDICATORS OF NARCOTICS USE

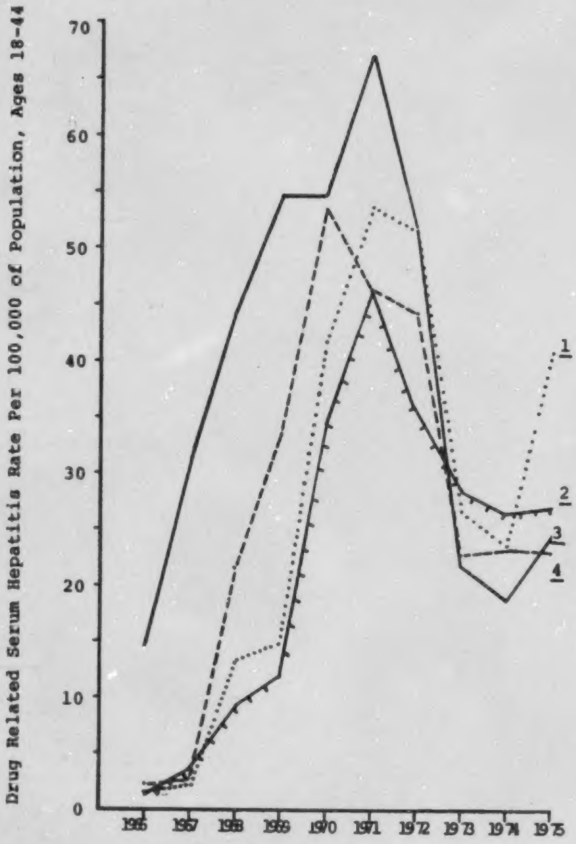
NEW YORK STATE



*1976 figures are provisional

CHART XI

DRUG-RELATED HEPATITIS RATES FOR NEW YORK STATE AND COMPARISON STATES



1 Maryland; 2 Pennsylvania; 3 New York State; 4 Massachusetts

CHART XII

NARCOTICS DEATH RATES FOR NEW YORK STATE AND COMPARISON STATES

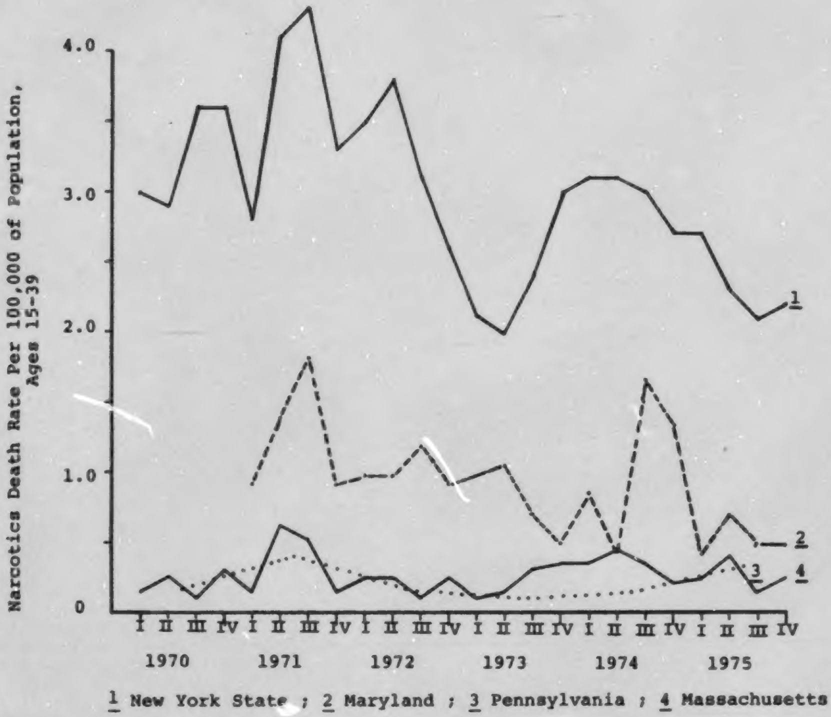
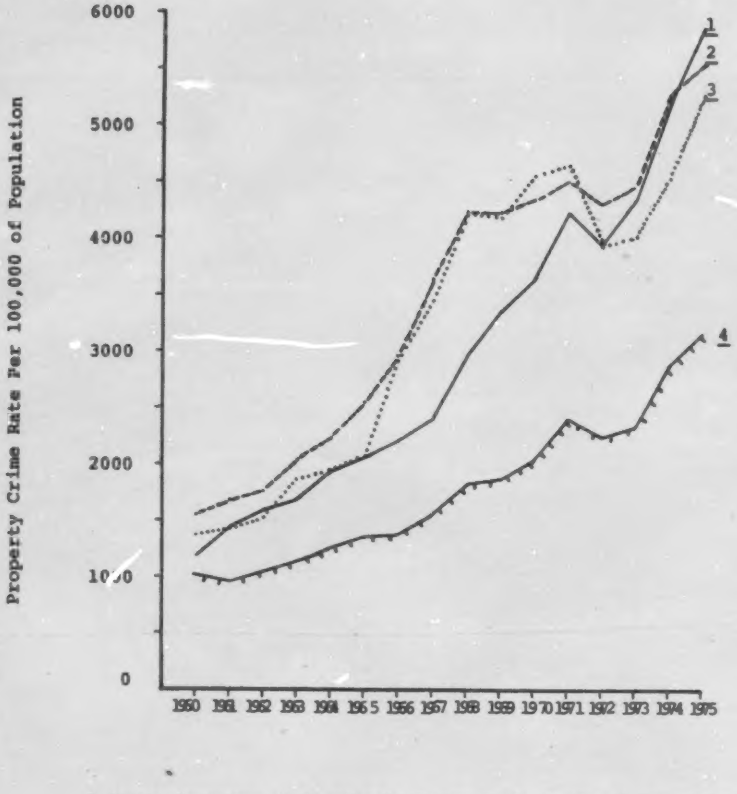


CHART XIII

PROPERTY CRIME COMPLAINT RATES FOR NEW YORK STATE AND COMPARISON STATES

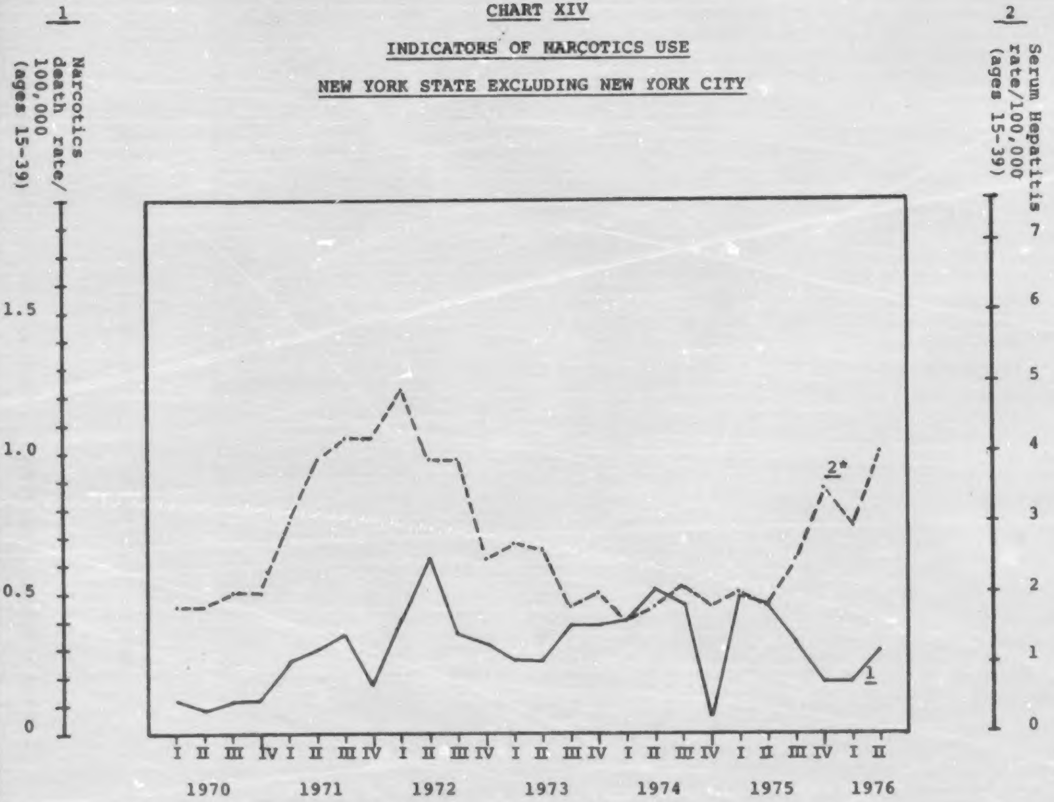


1 Massachusetts; 2 Maryland; 3 New York State; 4 Pennsylvania

CHART XIV

INDICATORS OF NARCOTICS USE

NEW YORK STATE EXCLUDING NEW YORK CITY



*1976 figures are provisional

SOURCES FOR DATA SHOWN ON CHARTS*

Chart I Indicators of Narcotics Use -- New York City

1) Narcotics Deaths: New York City Department of Health. Narcotics deaths consist of all recorded deaths classified by the following I.C.D.A. codes: 304.0, 304.1, and 304.9. I.C.D.A. code E854.8 is not used by the New York City Department of Health. Data on deaths classified into I.C.D.A. code E853.0 (one death in 1970 and one death in 1973) were not utilized because the month in which the deaths occurred was not obtainable.
Narcotics deaths for 1976 are provisional and do not include cases where narcotics have not been confirmed as the cause of death.

2) Emergency Room Narcotics Mentions: Drug Abuse Warning Network, Drug Enforcement Administration. Narcotics Mentions include heroin, methadone, and all other TC 40 narcotics. The data are for the New York City SMSA.

3) Serum Hepatitis Cases: Center for Disease Control, United States Department of Health, Education and Welfare. Serum hepatitis figures for 1976 are provisional: the quarterly figures were based on weekly reports and may not agree with annual reports of quarterly totals.

4) Treatment Admissions: Methadone Information Center, Community Treatment Foundation, Inc. Treatment Admissions consist of total admissions to all methadone maintenance clinics within New York City.

5) Heroin Purity: Drug Enforcement Administration, United States Department of Justice.

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*All rates for serum hepatitis cases and narcotics deaths were computed with United States Census figures from 1970, for population aged 15-39. Rates for drug-related hepatitis for selected states were computed differently and are discussed under sources for Chart XI.

Chart II Age at First Admission to All Methadone Maintenance Clinics in New York City

Methadone Information Center, Community Treatment Foundation, Inc.

Chart III Indicators of Narcotics Use -- Washington, D.C.

1) Narcotics Deaths: Washington, D.C. Medical Examiner's Office. Narcotics deaths consist of all deaths attributable to narcotism.

2) Emergency Room Narcotics Mentions: Drug Abuse Warning Network, Drug Enforcement Administration. Narcotics Mentions include heroin, methadone, and all other TC 40 narcotics. Data are for the Washington, D.C. SMSA.

3) Serum Hepatitis Cases: Center for Disease Control, United States Department of Health, Education and Welfare.

4) Treatment Admissions: Narcotics Treatment Administration, Washington, D.C.

5) Heroin Purity: Drug Enforcement Administration, United States Department of Justice.

Chart IV Indicators of Narcotics Use -- Baltimore

1) Narcotics Deaths: Baltimore Medical Examiner's Office. These figures include all positively screened narcotics deaths which were "signed out" as narcotics deaths. Monthly deaths classified by I.C.D.A. codes were not available.

2) Serum Hepatitis Cases: Baltimore Health Department. Baltimore's average quarterly serum hepatitis rates were computed by taking the annual rate and dividing by four.

Chart V Indicators of Narcotics Use -- Boston

1) Narcotics Deaths: Department of Public Health, The Commonwealth of Massachusetts. Narcotics deaths consist of all deaths classified according to the following I.C.D.A. codes: 304.0, 304.1, 304.9, E853.0, and E854.8 (when applicable).

2) Emergency Room Narcotics Mentions: Drug Abuse Warning Network, Drug Enforcement Administration. Narcotics Mentions include heroin, methadone, and all other TC 40 narcotics. Data are for the Boston SMSA.

3) Serum Hepatitis Cases: Department of Public Health, The Commonwealth of Massachusetts.

4) Treatment Admissions: Drug Treatment Program, City of Boston. Treatment Admissions consist of total admissions to all city-operated methadone maintenance clinics. These clinics comprise a majority of all methadone maintenance clinics in the city of Boston.

5) Heroin Purity: Drug Enforcement Administration, United States Department of Justice.

Chart VI Indicators of Narcotics Use -- Philadelphia

1) Serum Hepatitis Cases: Pennsylvania Department of Health.

2) Emergency Room Narcotics Mentions: Drug Abuse Warning Network, Drug Enforcement Administration. Narcotics Mentions include heroin, methadone, and all other TC 40 narcotics. Data are for the Philadelphia SMSA.

3) Heroin Purity: Drug Enforcement Administration, United States Department of Justice.

Chart VII Indicators of Narcotics Use -- Chicago

1) Narcotics Deaths: Illinois Department of Public Health. Narcotics deaths consist of all deaths classified according to the following I.C.D.A. codes: 304.0, 304.1, 304.9,and E853.0. No deaths were recorded in the E854.8 category. Cook County's average quarterly narcotics death rates were computed by taking the annual rate and dividing by four. For 1973, the narcotics death rate for Cook County was estimated from State data.

2) Emergency Room Narcotics Mentions: Drug Abuse Warning Network, Drug Enforcement Administration. Narcotics mentions include heroin, methadone, and all other TC 40 narcotics. Data are for the Chicago SMSA.

3) Serum Hepatitis Cases: Illinois Department of Public Health. Cook County was used in place of the city of Chicago.

4) Treatment Admissions: State of Illinois Dangerous Drugs Commission. Treatment Admissions consist of total admissions to all methadone maintenance clinics in the city of Chicago which receive financial support from the Illinois Dangerous Drugs Commission. These clinics include virtually all of the methadone maintenance clinics in the city of Chicago.

5) Heroin Purity: Drug Enforcement Administration, United States Department of Justice.

Chart VIII Narcotics Death Rates for New York City and Comparison Cities

1) New York City: New York City Department of Health. Narcotics deaths consist of all recorded deaths classified by the following I.C.D.A. codes: 304.0, 304.1, and 304.9. I.C.D.A. code E854.8 is not used by the New York City Department of Health. Data on deaths classified into I.C.D.A. code E853.0 (one death in 1970 and one death in 1973) were not utilized because the month in which the deaths occurred was not obtainable.

2) Baltimore: Baltimore Medical Examiner's Office. These figures include all positively screened narcotics deaths which were "signed out" as narcotics deaths. Monthly deaths classified by I.C.D.A. codes were not available.

3) Washington, D.C.: Washington, D.C. Medical Examiner's Office. Narcotics deaths consist of all deaths attributable to narcotism.

Chart IX Serum Hepatitis Rates for New York City and Comparison Cities

1) Washington, D.C.: Center for Disease Control, United States Department of Health, Education and Welfare.

2) Baltimore: Baltimore Health Department. Baltimore's average quarterly serum hepatitis rates were computed by taking the annual rate and dividing by four.

3) Philadelphia: Pennsylvania Department of Health.

4) New York City: Center for Disease Control, United States Department of Health, Education and Welfare.

Chart X Indicators of Narcotics Use -- New York State

1) Narcotics Deaths: Narcotics deaths for New York State were obtained by adding narcotics deaths for New York City and narcotics deaths for the remainder of the State. New York City narcotics deaths, which were obtained from the New York City Department of Health, include all recorded deaths which are classified according to the following I.C.D.A. codes: 304.0, 304.1, and 304.9. Narcotics deaths for the remainder of New York State were obtained from the Office of Biostatistics, New York State Department of Health, and include all recorded deaths which are classified according to the following I.C.D.A. codes: 304.0, 304.1, 304.9, E853.0, and E854.8 (when applicable). I.C.D.A. code E854.8 is not used by the New York City Department of Health. Data on deaths in New York City that are classified into I.C.D.A. code E853.0 (one death in 1970 and one death in 1973) were not utilized because the month in which the deaths occurred was not obtainable.

   Two sources have been used for statewide narcotics deaths because the Office of Biostatistics, New York State Department of Health, does not update its files to include narcotics deaths cases which are pending in New York City; the New York City Department of Health annually updates its data to include all pending cases. (Pending cases include all cases where narcotics have not been confirmed as the cause of death until considerably after the time of death.) Pending narcotics death cases for the remainder of New York State are included in the data acquired from the Office of Biostatistics, New York State Department of Health. Thus, by combining data from the two sources, a complete account of recorded narcotics deaths for the State has been obtained.

Narcotics deaths for 1976 are provisional because New York City does not update pending cases until early 1977.

2) Serum Hepatitis Cases: Center for Disease Control, United States Department of Heatlh, Education and Welfare. New York State serum hepatitis figures for 1976 are provisional. The quarterly figures were based on weekly reports and may not agree with annual reports of quarterly totals.

Chart XI Drug-Related Hepatitis Rates for New York State and Comparison States

Center for Disease Control, United States Department of Health, Education and Welfare. Rates were computed with United States Census population figures, ages 18 to 44, for 1966, 1968, 1970 and 1974. Calculations were based on methods developed by Lee Minichiello at the Institute for Defense Analyses. See Appendix A for details.

Chart XII Narcotics Death Rates for New York State and Comparison States

1) New York State: (See Chart X, Narcotics Deaths. The only difference is that 1976 figures for New York State are not included here.)

2) Maryland: Baltimore Medical Examiner's Office. These figures include all positively screened narcotics deaths which were "signed out" as narcotics deaths. Monthly deaths classified by I.C.D.A. codes were not available.

3) Pennsylvania: Pennsylvania Department of Health. Narcotics deaths consist of all deaths classified according to the following I.C.D.A. codes: 304.0, 304.1, 304.9, E853.0, and E854.8 (when applicable). Pennsylvania's average quarterly narcotic death rates were computed by taking the annual rate and dividing by four.

4) Massachusetts: Department of Public Health, The Commonwealth of Massachusetts. Narcotics deaths consist of all deaths classified according to the following I.C.D.A. codes: 304.0, 304.1, 304.9, E853.0, and E854.8 (when applicable).

Chart XIII Property Crime Complaint Rates for New York State and Comparison States

Federal Bureau of Investigation, Uniform Crime Reports. Total state populations were used to compute crime rates per 100,000 population. Population figures were obtained annually from the Uniform Crime Reports Index of Crime. Property crimes include the following categories: auto theft, larceny (all dollar amounts), burglary, and robbery.

Chart XIV Indicators of Narcotics Use -- New York State Excluding New York City

1) Narcotics Deaths: Office of Biostatistics, New York State Department of Health. All recorded deaths classified according to the following I.C.D.A. codes: 304.0, 304.1, 304.9, E853.0, and E854.8 (when applicable).

2) Serum Hepatitis Cases: Center for Disease Control, United States Department of Health, Education and Welfare. New York State serum hepatitis figures for 1976 are provisional. The quarterly figures were based on weekly reports and may not agree with annual reports of quarterly totals.

Appendix A

Definitions of Indicators, and Choice of Comparison Areas

1. Narcotics Deaths:

Deaths attributable directly to narcotics use are an indicator of prevalence, although numbers of deaths may also be related to supply and price. That is, if the quality of street heroin goes up per bag (e.g. price in effect declines), it is possible that more addicts will overdose, and a greater portion of these will die as a result of the unaccustomed higher purity per dose. However, it is expected that such reactions would be of short duration, since information about heroin quality travels quickly on the street, whereas the effects of changes in prevalence would persist over the long term.

There has been some dispute in the past about the causes of narcotics overdose deaths.* However, recent research indicates that the questionable aspects of narcotics deaths were due in part to insufficiently sensitive techniques in coroners' laboratories.** Improved analytic techniques contribute some variability to death figures over time, but this is probably minor compared to the variation introduced by different definitions of what constitutes a drug death.

It is most useful to consider only deaths directly due to narcotics intake because these are most widely and consistently reported. Furthermore, within the category of narcotics deaths, some jurisdictions include accidental deaths and homicides when drugs are found in the body, but most do not. Because of multiple problems of definition and because the figures are not always available, these deaths (often referred to as "narcotics related" deaths) have been excluded whenever possible.***

To measure narcotics overdose deaths, we utilized the following five codes from the International Classification of Diseases,**** which we believe provide a valid and reliable, yet conservative, estimate of narcotics deaths: 304.0; 304.1; 304.9; E853.0; and E854.8 when applicable.

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*Brecher, Edward M. Licit and Illicit Drugs. Boston: Little, Brown and Co., 1972, pp. 101-114.

**Garriott, James C. and Sturner, William Q. "Morphine Concentrations and Survival Periods in Acute Heroin Fatalities." The New England Journal of Medicine, December 13, 1973.

***Barton, William I. "Narcotic-Related Deaths Decrease in 1972 from the Number of Narcotic-Related Deaths in 1971." The International Journal of the Addictions, Vol. 9, Quarter (4), 1974, pp. 513-529.

****Eighth Revision, International Classification of Diseases, Adapted for the United States; Volume I and II: U.S. Department of Health, Education, and Welfare, Public Health Service, National Center for Health Statistics.

(E854.8, acute intravenous narcotism, was first introduced in 1973, but was sometimes not used until 1974 or later.) In some areas, data were only available from medical examiners, often without code designations. In these cases accidental narcotics overdoses were selected wherever possible.

Death rates were computed to the population aged 15-39 in 1970.

2. Incidence of Serum Hepatitis (Hepatitis B):

At least some proportion of serum hepatitis cases is spread through the use of contaminated needles, and when it is, the disease is usually contracted within the first year or two of regular intravenous use. Heroin is the drug most commonly injected by addicts. There are many problems with hepatitis B as an indicator of heroin use, however, and in an attempt to gather professional opinion on the question, we sent a memorandum to eight researchers with experience in the area soliciting their comments. In every case, their response indicated caution in relying on serum hepatitis as an indicator of parenteral drug use, although some felt that it can be used if analysis is restricted to incidence among 15-39 year olds.* Other doctors felt that incidence of serum hepatitis does not provide an accurate reflection of incidence of parenteral drug use.

Nevertheless, it appears that the number of new cases of hepatitis B in New York State and comparison areas bears watching in conjuction with other incidence indicators of narcotics use. The New York City figures in particular present a special problem because they have been at what appears to be an artificially low level since the fourth quarter of 1973. The New York City Department of Health could not explain the reasons for the low reported rate, although several explanations are possible, most having to do with irregular reporting practices on the part of hospitals and private practitioners. However, since the numbers reported from areas of the State outside the City also declined during the period, it is reasonable to conclude that the decline is probably real.

The age-specific analysis developed at the Institute of Defense Analyses and slightly modified for our analysis is described below. This method could only be utilized for the states, for New York City, Washington, D.C., and the United States as a whole, because age-specific data are not available for cities. Serum hepatitis rates for the states were based on the population aged 18-44 because the 15-39 grouping was not available. For the cities we used the total serum hepatitis cases as a rate based on the 1970 city populations aged 15-39.

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*Minichiello, Lee P. Indicators of Intravenous Drug Use in the United States 1966-1973: An Examination of Trends in Intravenous Drug Use Reflected by Hepatitis and DAWN Reporting Systems, Washington, D.C.: Institute for Defense Analyses, March 1975.

Computing Drug-Related Cases of Hepatitis

This method is an attempt to decompose infectious and unspecified types of hepatitis into drug and non-drug-related categories. The age distribution of cases for a given year are examined and the number of cases which are in excess of the "historically" expected number are deemed drug-related. This number of drug-related cases is added to the number of serum hepatitis cases, for all ages, to get an estimate for the total number of drug related cases.

The "historical" age distribution was calculated by looking at the cases in states covered in this report for the years 1958, 1960, 1962, 1965. This period was before the so-called "heroin epidemic", and hence these cases reported will be assumed to be almost entirely non-drug-related. The distributions for all the years and all localities are very similar. The number of cases peaks in the 10-14 age bracket and then decreases somewhat linearly with increasing age. From 1966 to the present, however, many more cases than would be expected from previous years occur in the 15-39 years age group. A report cited by Minichiello* shows that the age-at-first-use of heroin is almost entirely within tne 15-39 group. As hepatitis is typically contracted within the first year or two of intravenous use of drugs, the sudden rise in number of cases in this age group is thought to be related to a rise in drug use.

The method proceeds by approximating the number of non-drug cases in the 15-39 age group by a straight line. Its slope is determined by the numbers in the 10-14 and 40-49 age groups. The actual number of cases which is in excess of this line are called drug-related. All cases outside the 15-39 group are also regarded as non-drug-related cases. Since the linear approximation gives an overstatement of the "historical" numbers, the estimates for the drug-related category are probably conservative. To decompose the cases into the two categories, the following formula is used:

$$n_k = a + k \cdot \frac{(b-a)}{5}$$

where n_k = expected number of non-drug related cases in the $k^{\underline{th}}$ age group among (15-19), (20-24), (25-29), and (30-39)

a = observed number in the (10-14) group

b = one-half of observed number in the (40-49) group

For this report, this method was modified by weighting the four intervals proportionately to their size in years. The formula then becomes

$$n_k = a + \frac{k(b-a)}{6}, \text{ for } k=1,2,3$$

$$\text{and} \quad n_k = 2\left(a + \frac{k\ (b-a)}{6}\right), \text{ for } k=4$$

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*Ibid.

since the fourth group, (30-39), includes twice as many years as the others.

This modification provides a still more conservative estimate of drug-related cases.

DAWN: Narcotics Mentions in Hospital Emergency Rooms:

Project DAWN is a nationwide data system jointly funded by the Drug Enforcement Administration and the National Institute on Drug Abuse. Reports are collected from several types of institutions which encounter drug users in 29 Standard Metropolitan Statistical Areas. The system as a whole is not a random sample of the entire U.S., but it does include a significant portion of the areas in the country which have serious drug use problems, and the system as a whole is representative of the country.

The following SMSAs in the system contain cities studied in this report: Boston, Buffalo, Chicago, New York City, Philadelphia and Washington, D.C. For this group and for the system as a whole, data were obtained for total drug episodes and drug mentions* by selected drugs, for continuously reporting facilities from the third quarter of 1973 through the first quarter of 1976, the only period for which data were available.

We focussed on narcotic drug mentions from emergency rooms in our analysis, and regard these as one rough gauge of the relative availability of illegal narcotics. Narcotic drugs include heroin, methadone, and other drugs in the therapeutic class 40 (TC 40). It should be noted that our reports are a sub-group of total DAWN reports from a given SMSA because we excluded facilities which did not report continuously. Nevertheless, we have about 75% of the total drug mentions in the system.

Our data were obtained through the Drug Enforcement Administration from the IMS which operates the databank.

Treatment Admissions:

Successful implementation of the drug laws should have exerted sufficient pressure on drug users to relinquish or diminish their habits to increase the numbers of users entering treatment in the short run. This should have been especially evident in those programs dealing with heroin addicts, namely methadone maintenance and detoxification programs. However, this increase in treatment enrollments would be of relatively short duration, because the pool of existing addicts entering treatment under pressure should eventually be depleted, resulting in a decline in treatment enrollments.

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* Drug episodes are visits to a DAWN center. Drug mentions consist of "the sum of all substances, in the aggregate, which played a part in causing an abuser to seek treatment or other help". (I.M.S. America, Ltd. Drug Abuse Warning Network, Phase III Report, April 1974-April 1975. Ambler, Pa.: I.M.S. America for Drug Enforcement Administration and National Institute on Drug Abuse, p. S-2.)

Furthermore, the average age of treatment admissions should increase in New York State relative to other states, if the laws successfully deterred young people from regular drug use. Likewise, the proportion of readmissions to programs should increase in New York State compared to elsewhere, also because new users are expected to have been deterred.

The age structure of admissions and the proportion of readmissions are available only for some programs in New York City. Even total admissions are often unavailable, and indeed are the weakest indicator employed in this study. Many systems, including the Federal CODAP reporting system, underwent extensive revision during the period studied and therefore do not yield reliable time series. All available data were nonetheless examined, and some useful information was extracted.

Property Crime Complaint Rates:

Property crime complaints reflect the volume of property crimes committed each year, although they are distorted by the fact that citizens fail to report many crimes to the police. We computed property crime complaint rates to the total estimated population base for each year, and included the following crimes: robbery, burglary, larceny-theft, and motor vehicle theft.

Choosing Comparison Areas

Changes in the available indicators for areas within New York State have been compared to changes in indicators for areas outside the State which are not subject to the same drug laws but which are demographically similar to the in-State areas. Thus, out-of-state comparison areas serve as quasi-controls for the New York State areas, allowing us to isolate, as far as possible, the effects of the drug laws from those of other variables affecting drug and crime patterns.

In selecting upstate areas for study, the strategy was to choose a variety of locales, including the State's three largest cities, New York, Buffalo (and Erie County), and Rochester (and Monroe County); one densely populated suburb, Nassau County; and two smaller landlocked cities with their counties, Albany and Binghamton (in Albany and Broome counties).* This group of areas adequately represents the major population centers in the State.

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*Limited data availability has precluded specific discussions of many of the areas outside New York City. For narcotics deaths and serum hepatitis, the region outside New York City can best be analyzed as a whole, because the smaller numbers for individual smaller cities fluctuate widely. Both types of analysis have been performed.

New York State target areas were matched with demographically similar out-of-state areas in which it was reasonable to expect drug and crime patterns to be influenced by the same factors. Eastern corridor areas were chosen because the drug distribution patterns in other parts of the country are thought to differ markedly from those in eastern cities, and because we expected that regional similarities for cities of a particular size are quite strong.* The following demographic variables were used to match the New York State cities to out-of-state cities: total population, population density, percent black population, percent of families below the national low income level, serious crimes per 1,000 population, and median income. In matching counties, percent change in total population and in black population from 1960 to 1970, to indicate relative stability of the area, were included.** The out-of-state areas were ranked by the degree of similarity to the comparable New York State area for each variable.

As a result of composite rankings based on these variables, we selected at least two out-of-state areas as comparisons for each New York State target city or county. They are as follows:

New York City	Baltimore, Md. Boston, Mass. Chicago, Ill. Newark, N.J. Philadelphia, Pa. Washington, D.C.
Buffalo	Boston, Mass. Pittsburgh, Pa.
Rochester	Erie, Pa. Springfield, Mass.
Albany	Allentown, Pa. Springfield, Mass.
Binghamton	Allentown, Pa. Altoona, Pa. Pittsfield, Mass.
Nassau County	Delaware County, Pa. Fairfield County, Conn. Middlesex County, Mass.

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*Pidot, George B., Jr. and Sommer, Jown W. Modal Cities. Washington, D.C.: U.S. Environmental Protection Agency, October 1974. This study grouped 224 U.S. cities on the basis of socio-economic similarities and found that the regional character of the groupings was marked.

**Data were obtained from the Social and Economic Administration of the Bureau of the Census County and City Data Book, 1972: A Statistical Abstract Supplement. Washington, D.C.: U.S. Department of Commerce, 1973 .

None of these matches is ideal, especially for New York City, which is a unique center of drug use activity and much more densely populated than most urban areas. Data for each indicator of drug use were not available for each of the comparison cities and counties, but several indicators of prevalence and incidence were analyzed to determine if changes in the type or level of drug use in New York State were associated with the introduction of the 1973 drug law.

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Appendix B

The following Tables summarize the availability and sources for all data collected and analyzed as part of this study.

Tables 1) New York State and its Comparison States

2) New York City and its Comparison Cities

3) Buffalo and its Comparison Cities

4) Rochester and its Comparison Cities

5) Albany and its Comparison Cities

6) Binghamton and its Comparison Cities

7) Nassau County and its Comparison Counties

TABLE 1

NEW YORK STATE AND ITS COMPARISON STATES

State	Narcotics Deaths	Serum Hepatitis	Treatment Admissions	Narcotics Arrests	Number of Property Offenses Known To Police	Treatment Admissions S M S A		HEROIN PRICE AND PURITY	
						DAWN	CODAP	DEA	Public Research Institute
New York	Monthly 1/70-6/76	Monthly 1/70-6/76 Yearly Minichiello 1966-1975	1)Monthly 1/71-12/75 All modalities ODAS operated 2)Monthly 1/71-12/75 All modalities ODAS funded	Yearly 1970-1973	Yearly 1960-1975	----	----	----	-----
New Jersey	Drug Deaths Yearly 1970-1975	Monthly 1/70-12/75 Yearly Minichiello 1966-1975	------	Yearly 1970-1973	Yearly 1960-1975	----	----	----	-----
Connecticut	Yearly 1970-1975	Monthly 1/70-12/75 Yearly Minichiello 1966-1975	------	Yearly 1970-1973	Yearly 1960-1975	----	----	----	-----
Massachusetts	Monthly 1/70-12/75	Monthly 1/70-12/75 Yearly Minichiello 1966-1975	------	Yearly 1970-1973	Yearly 1960-1975	----	----	----	----

(continued)

NEW YORK STATE AND ITS COMPARISON STATES

State	Narcotics Deaths	Serum Hepatitis	Treatment Admissions	Narcotics Arrests	Number of Property Offenses Known To Police	Treatment Admissions S M S A			HEROIN PRICE AND PURITY
						DAWN	CODAP	DEA	Public Research Institute
Pennsylvania	Yearly 1970-1975	Monthly 1/70-12/75 Yearly Minichiello 1966-1975	------	Yearly 1970-1973	Yearly 1960-1975	----	-----	---	------
Maryland	1) Monthly 1/71-12/75 2) Yearly 1970-1975	Monthly 1/70-12/75 Yearly Minichiello 1966-1975	1) Methadone Maintenance plus Detoxification Monthly 1/72-12/75 2) Drug-free Monthly 1/72-12/75	Yearly 1970-1973	Yearly 1960-1975	----	-----	---	-----
Illinois	Yearly 1970-1975	Monthly 1/70-12/75 Yearly Minichiello 1966-1975	------	Yearly 1970-1973	Yearly 1960-1975	----	-----	---	-----
Ohio	----	Yearly Minichiello 1966-1975	------	-----	Yearly 1960-1975	----	-----	---	-----
United States	Yearly 1970-1975	Monthly 1/70-12/75 Yearly Minichiello 1966-1975	-----	-----	Yearly 1960-1975	Same as N.Y.C.	-----	---	-----

Sources

New York State

Narcotics Deaths - New York State Department of Health, Office of Biostatistics; New York City Department of Health
Serum Hepatitis - Center for Disease Control, United States Department of Health, Education and Welfare
Treatment Admissions -(ALL)- State of New York Office of Drug Abuse Services
Narcotics Arrests - Federal Bureau of Investigation (Special Request)
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)

New Jersey

Drug Deaths - New Jersey State Department of Health
Serum Hepatitis - Center for Disease Control, United States Department of Health, Education and Welfare
Narcotics Arrests - Federal Bureau of Investigation (Special Request)
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)

Connecticut

Narcotics Deaths - Connecticut Department of Health
Serum Hepatitis - Center for Disease Control, United States Department of Health, Education and Welfare
Narcotics Arrests - Federal Bureau of Investigation (Special Request)
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)

Massachusetts

Narcotics Deaths - Department of Public Health, The Commonwealth of Massachusetts
Serum Hepatitis - Center for Disease Control, United States Department of Health, Education and Welfare
Narcotics Arrests - Federal Bureau of Investigation (Special Request)
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)

Pennsylvania

Narcotics Deaths - Pennsylvania Department of Health
Serum Hepatitis - Center for Disease Control, United States Department of Health, Education and Welfare
Narcotics Arrests - Federal Bureau of Investigation (Special Request)
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)

Maryland

Narcotics Deaths - #1. Baltimore Medical Examiner's Office
#2. Maryland Department of Health Statistics
Serum Hepatitis - Center for Disease Control, United States Department of Health, Education and Welfare
Treatment Admissions -(ALL)- State of Maryland Department of Health and Mental Hygiene, Drug Abuse Administration
Narcotics Arrests - Federal Bureau of Investigation (Special Request)
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)

Illinois

Narcotics Deaths - Illinois Department of Public Health
Serum Hepatitis - Center for Disease Control, United States Department of Health, Education and Welfare
Narcotics Arrests - Federal Bureau of Investigation (Special Request)
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)

Ohio

Serum Hepatitis - Center for Disease Control, United States Department of Health, Education and Welfare
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)

U.S.A.

Narcotics Deaths - United States Department of Health, Education and Welfare, National Center for Health Statistics
Serum Hepatitis - Center for Disease Control, United States Department of Health, Education and Welfare
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)
D.A.W.N. - Drug Abuse Warning Network, established by The Drug Enforcement Administration and The National Institute on Drug Abuse

TABLE 2

NEW YORK CITY AND ITS COMPARISON CITIES

						S M S A		HEROIN PRICE AND PURITY	
City	Narcotics Deaths	Serum Hepatitis	Treatment Admissions	Narcotics Arrests	Number of Property Offenses Known to Police	DAWN	Treatment Admissions CODAP	DEA	Public Research Institute
New York, New York	Monthly 1/70-6/76	Monthly 1/70-6/76	1) Methadone Maintenance, monthly 1/70-9/76 2) Ambulatory Detoxification, monthly 8/71-12/75 3) Drug-free monthly 4/73-12/75	Yearly 1970-1975	Yearly 1960-1975	1) Emergency Rooms, monthly 7/73-5/76 2) Drug deaths, monthly 7/73-5/76 3) Inpatient centers, monthly 7/73-4/75 4) Crisis centers, monthly 7/73-5/76	Admissions, monthly 4/73-6/76	Quarterly IIIQ73-IQ76	Quarterly IIIQ70-IIQ74
Chicago, Illinois	Yearly 1970-1975 (Cook Co.)	Monthly 1/70-12/75 (Cook Co.)	1) Methadone Maintenance, quarterly IQ70-IIQ76 2) Drug-free, quarterly IQ70-IIQ76 3) Ambulatory Detoxification, quarterly IQ71-IIQ76	Yearly 1970-1975	Yearly 1960-1975	Same as N.Y.C.	Same as N.Y.C.	Quarterly IIIQ73-IQ76 incomplete	Same as N.Y.C.

(continued)

NEW YORK CITY AND ITS COMPARISON CITIES

						S M S A		HEROIN PRICE AND PURITY	
City	Narcotics Deaths	Serum Hepatitis	Treatment Admissions	Narcotics Arrests	Number of Property Offenses Known to Police	DAWN	Treatment Admissions CODAP	DEA	Public Research Institute
Baltimore, Maryland	Monthly 1/71-12/75	Yearly 1970-1975	-------	Yearly 1970-1973	Yearly 1960-1975	----	Same as N.Y.C.	----	-------
Philadelphia, Pennsylvania	Drug deaths, quarterly IQ70-IVQ75	Monthly 1/71-12/75	-------	Yearly 1970-1973	Yearly 1960-1975	Same as N.Y.C.	Same as N.Y.C.	Same as N.Y.C.	Same as N.Y.C.
Washington, D.C.	Monthly 1/70-12/75	Monthly 1/70-12/75	All modalities combined, monthly 10/71-12/75	Yearly 1970-1975	Yearly 1960-1975	Same as N.Y.C.	Same as N.Y.C.	Same as N.Y.C.	Same as N.Y.C.
Newark, New Jersey	Drug deaths, yearly 1970-1975	Yearly 1970-1975	1) Methadone Maintenance, monthly 2/71-12/75 2) Ambulatory Detoxification, monthly 1/70-12/75 3) Drug-free, monthly 2/71-12/75	Yearly 1970-1973	Yearly 1960-1975	-------	------	-------	-------

Sources

New York City, New York

Narcotics Deaths - New York City Department of Health
Serum Hepatitis - Center for Disease Control, United States Department of Health, Education and Welfare
Treatment Admissions - #1. Methadone Maintenance Treatment: Methadone Information Center, Community Treatment Foundation, Inc. and New York City Department of Health, Methadone Maintenance Treatment Program.
#2. Ambulatory Detoxification Program: New York City Department of Health.
#3. Drug-Free Treatment. New York City Addiction Services Agency
Narcotics Arrests - Federal Bureau of Investigation (Special Request)
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)
D.A.W.N. - Drug Abuse Warning Network, established by The Drug Enforcement Administration and The National Institute on Drug Abuse
C.O.D.A.P. - Client Oriented Data Acquisition Process, National Institute on Drug Abuse
D.E.A. - Drug Enforcement Administration, United States Department of Justice
Public Research Institute of the Center for Naval Analyses, Arlington, Virginia (Special Request)

Chicago, Illinois

Narcotics Deaths - Illinois Department of Public Health

Serum Hepatitis - Illinois Department of Public Health
Treatment Admissions - (ALL) - State of Illinois Dangerous Drugs Commission
Narcotics Arrests - Federal Bureau of Investigation (Special Request)
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)
D.A.W.N. - Drug Abuse Warning Network, established by The Drug Enforcement Administration and The National Institute on Drug Abuse
C.O.D.A.P. - Client Oriented Data Acquisition Process, National Institute on Drug Abuse
D.E.A. - Drug Enforcement Administration, United States Department of Justice
Public Research Institute of the Center for Naval Analyses, Arlington, Virginia (Special Request)

Baltimore, Maryland

Narcotics Deaths - Baltimore Medical Examiner's Office
Serum Hepatitis - Baltimore Health Department
Narcotics Arrests - Federal Bureau of Investigation (Special Request)
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)
C.O.D.A.P. - Client Oriented Data Acquisition Process, National Institute on Drug Abuse

Philadelphia, Pennsylvania

Drug Deaths - Philadelphia Medical Examiner's Office
Serum Hepatitis - Pennsylvania Department of Health
Narcotics Arrests - Federal Bureau of Investigation (Special Request)
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)
D.A.W.N. - Drug Abuse Warning Network, established by The Drug Enforcement Administration and The National Institute on Drug Abuse
C.O.D.A.P. - Client Oriented Data Acquisition Process, National Institute on Drug Abuse
D.E.A. - Drug Enforcement Administration, United States Department of Justice
Public Research Institute of the Center for Naval Analyses, Arlington, Virginia (Special Request)

Washington, D.C.

Narcotics Deaths - Washington Medical Examiner's Office
Serum Hepatitis - Center for Disease Control, United States Department of Health, Education and Welfare
Treatment Admissions - Narcotics Treatment Administration
Narcotics Arrests - Federal Bureau of Investigation (Special Request)
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)
D.A.W.N. - Drug Abuse Warning Network, established by The Drug Enforcement Administration and The National Institute on Drug Abuse
C.O.D.A.P. - Client Oriented Data Acquisition Process, National Institute on Drug Abuse
D.E.A. - Drug Enforcement Administration, United States Department of Justice
Public Research Institute of the Center for Naval Analyses, Arlington, Virginia (Special Request)

Newark, New Jersey

Drug Deaths - New Jersey State Department of Health
Serum Hepatitis - Newark Department of Health
Treatment Admissions -(ALL)- New Jersey Medical College, Department of Preventive Medicine and Community Health
Narcotics Arrests - Federal Bureau of Investigation (Special Request)
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)

TABLE 3

BUFFALO AND ITS COMPARISON CITIES

City	Narcotics Deaths	Serum Hepatitis	Treatment Admissions	Narcotics Arrests	Number of Property Offenses Known To Police	S M S A	S M S A	HEROIN PRICE AND PURITY	HEROIN PRICE AND PURITY
						DAWN	Treatment Admissions CODAP	DEA	Public Research Institute
Buffalo, New York	Monthly 1/70-12/75 (Erie Co.)	Monthly 1/71-12/75	---------	Yearly 1970-1975	Yearly 1960-1975	Same as N.Y.C.	Same as N.Y.C.	Quarterly IIIQ73-IQ76 incomplete	Same as N.Y.C.
Pittsburgh, Pennsylvania	Yearly 1970-1975	Monthly 1/71-12/75	---------	Yearly 1970-1973	Yearly 1960-1975	-----	Same as N.Y.C.	------	------
Boston, Massachusetts	Monthly 1/70-12/75	Monthly 1/70-12/75	1) Methadone Maintenance, monthly 9/70-12/75 2) Ambulatory Detoxification, (new and total admissions) 7/70-12/75	Yearly 1970-1975	Yearly 1960-1975	Same as N.Y.C.	Same as N.Y.C.	Quarterly IIIQ73-IQ76 incomplete	Same as N.Y.C.

Sources

Buffalo, New York

Narcotics Deaths - New York State Department of Health, Office of Biostatistics
Serum Hepatitis - New York State Department of Health
Narcotics Arrests - Federal Bureau of Investigation (Special Request)
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)
D.A.W.N. - Drug Abuse Warning Network, established by The Drug Enforcement Administration and The National Institute on Drug Abuse
C.O.D.A.P. - Client Oriented Data Acquisition Process, National Institute on Drug Abuse
D.E.A. - Drug Enforcement Administration, United States Department of Justice
Public Research Institute of the Center for Naval Analyses, Arlington, Virginia (Special Request)

Pittsburgh, Pennsylvania

Narcotics Deaths - Pennsylvania Department of Health
Serum Hepatitis - Allegheny County Health Department
Narcotics Arrests - Federal Bureau of Investigation (Special Request)
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)
C.O.D.A.P. - Client Oriented Data Acquisition Process, National Institute on Drug Abuse

Boston, Massachusetts

Narcotics Deaths - Department of Public Health, The Commonwealth of Massachusetts
Serum Hepatitis - Department of Public Health, The Commonwealth of Massachusetts
Treatment Admissions - City of Boston, Drug Treatment Program
Narcotics Arrests - Federal Bureau of Investigation (Special Request)
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)
D.A.W.N. - Drug Abuse Warning Network, established by The Drug Enforcement Administration and The National Institute on Drug Abuse
C.O.D.A.P. - Client Oriented Data Acquisition Process, National Institute on Drug Abuse
D.E.A. - Drug Enforcement Administration, United States Department of Justice
Public Research Institute of the Center for Naval Analyses, Arlington, Virginia (Special Request)

TABLE 4

ROCHESTER AND ITS COMPARISON CITIES

						TREATMENT ADMISSIONS S M S A		HEROIN PRICE AND PURITY	
City	Narcotics Deaths	Serum Hepatitis	Treatment Admissions	Narcotics Arrests	Number of Property Offenses Known To Police	DAWN	CODAP	DEA	Public Research Institute
Rochester, New York	Monthly 1/70-12/75 (Monroe Co.)	Monthly 1/71-12/75	------	Yearly 1971-1974	Yearly 1960-1975	----	Same as N.Y.C.	----	Same as N.Y.C.
Springfield, Massachusetts	Monthly 1/70-12/75	Monthly 1/70-12/75	--------	--------	Yearly 1960-1975	----	Same as N.Y.C.	----	------
Erie, Pennsylvania	Yearly 1970-1975	Monthly 1/71-12/75 (Erie Co.)	--------	Yearly 1971	Yearly 1960-1975	----	-----	----	------

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Sources

Rochester, New York

Narcotics Deaths - New York State Department of Health, Office of Biostatistics
Serum Hepatitis - New York State Department of Health
Narcotics Arrests - Federal Bureau of Investigation (Special Request)
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)

C.O.D.A.P. - Client Oriented Data Acquisition Process, National Institute on Drug Abuse
Public Research Institute of the Center for Naval Analyses, Arlington, Virginia (Special Request

Springfield, Massachusetts

Narcotics Deaths - Department of Public Health, The Commonwealth of Massachusetts
Serum Hepatitis - Department of Public Health, The Commonwealth of Massachusetts
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)
C.O.D.A.P. - Client Oriented Data Acquisition Process, National Institute on Drug Abuse

Erie, Pennsylvania

Narcotics Deaths - Pennsylvania Department of Health
Serum Hepatitis - Pennsylvania Department of Health
Narcotics Arrests - Federal Bureau of Investigation (Special Request)
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)

TABLE 5

ALBANY AND ITS COMPARISON CITIES

						Treatment Admissions S H S A		HEROIN PRICE AND PURITY	
City	Narcotics Deaths	Serum Hepatitis	Treatment Admissions	Narcotics Arrests	Number of Property Offenses Known To Police	DAWN	CODAP	DEA	Public Research Institute
Albany, New York	Monthly 1/70-12/75 (Albany Co.)	Monthly 1/71-12/75	--------	Yearly 1970-1975	Yearly 1960-1975	---	Same as N.Y.C.	---	------
Allentown, Pennsylvania	Yearly 1970-1975	Monthly 1/71-12/75 (Lehigh Co.)	--------	Yearly 1971-1973, 1975	Yearly 1960-1975	---	Same as N.Y.C.	---	------
Springfield, Massachusetts	Monthly 1/70-12/75	Monthly 1/70-12/75	--------	--------	Yearly 1960-1975	---	Same as N.Y.C.	---	------

Sources

Albany, New York

Narcotics Deaths - New York State Department of Health, Office of Biostatistics
Serum Hepatitis - New York State Department of Health
Narcotics Arrests - Federal Bureau of Investigation (Special Request)
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)
C.O.D.A.P. - Client Oriented Data Acquisition Process, National Institute on Drug Abuse

Allentown, Pennsylvania

Narcotics Deaths - Pennsylvania Department of Health
Serum Hepatitis - Pennsylvania Department of Health
Narcotics Arrests - Federal Bureau of Investigation (Special Request)
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)
C.O.D.A.P. - Client Oriented Data Acquisition Process, National Institute on Drug Abuse

Springfield, Massachusetts

Narcotics Deaths - Department of Public Health, The Commonwealth of Massachusetts
Serum Hepatitis - Department of Public Health, The Commonwealth of Massachusetts
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)
C.O.D.A.P. - Client Oriented Data Acquisition Process, National Institute on Drug Abuse

TABLE 6

BINGHAMTON AND ITS COMPARISON CITIES

City	Narcotics Deaths	Serum Hepatitis	Treatment Admissions	Narcotics Arrests	Number of Property Offenses Known To Police	S M S A Treatment Admissions		HEROIN PRICE AND PURITY	
						DAWN	CODAP	DEA	Public Research Institute
Binghamton, New York	Monthly 1/70-12/75	Monthly 1/71-12/75	--------	Yearly 1971	Yearly 1960-1975	-----	------	----	------
Altoona, Pennsylvania	Yearly 1970-1975	Monthly 1/71-12/75 (Blair Co.)	--------	Yearly 1971-1972	Yearly 1960-1975	-----	------	----	------
Allentown, Pennsylvania	Yearly 1970-1975	Monthly 1/71-12/75 (Lehigh Co.)	--------	Yearly 1971-1973, 1975	Yearly 1960-1975	-----	Same as N.Y.C.	----	------
Pittsfield, Massachusetts	Monthly 1/70-12/75	Monthly 1/70-12/75	--------	--------	Yearly 1960-1975	-----	------	----	------

Sources

Binghamton, New York

Narcotics Deaths - New York State Department of Health, Office of Biostatistics
Serum Hepatitis - New York State Department of Health
Narcotics Arrests - Federal Bureau of Investigation (Special Request)
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)

Altoona, Pennsylvania

Narcotics Deaths - Pennsylvania Department of Health
Serum Hepatitis - Pennsylvania Department of Health
Narcotics Arrests - Federal Bureau of Investigation (Special Request)
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)

Allentown, Pennsylvania

Narcotics Deaths - Pennsylvania Department of Health
Serum Hepatitis - Pennsylvania Department of Health
Narcotics Arrests - Federal Bureau of Investigation (Special Request)
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)
C.O.D.A.P. - Client Oriented Data Acquisition Process, National Institute on Drug Abuse

Pittsfield, Massachusetts

Narcotics Deaths - Department of Public Health, The Commonwealth of Massachusetts
Serum Hepatitis - Department of Public Health, The Commonwealth of Massachusetts
Property Crime Complaints - Federal Bureau of Investigation (Uniform Crime Reports)

TABLE 7

NASSAU COUNTY AND ITS COMPARISON COUNTIES

City	Narcotics Deaths	Serum Hepatitis	Treatment Admissions	Narcotics Arrests	Number of Property Offenses Known To Police	Treatment Admissions S M S A DAWN	Treatment Admissions S M S A CODAP	HEROIN PRICE AND PURITY DEA	HEROIN PRICE AND PURITY Public Research Institute
Nassau County, New York	Monthly 1/70-12/75	Monthly 1/71-12/75	--------	------	---------	----	----	---	-------
Middlesex County, Massachusetts	Monthly 1/70-12/75	Monthly 1/70-12/75	--------	------	---------	----	----	---	-------
Delaware County, Pennsylvania	Yearly 1970-1975	Monthly 1/71-12/75	-------	------	---------	---	----	---	------
Fair-Field County, Connecticut	-------	Monthly 1/72-12/75	-------	------	--------	---	----	---	------

Sources

Nassau County, New York

Narcotics Deaths - New York State Department of Health, Office of Biostatistics
Serum Hepatitis - New York State Department of Health

Middlesex County, Massachusetts

Narcotics Deaths - Department of Public Health, The Commonwealth of Massachusetts
Serum Hepatitis - Department of Public Health, The Commonwealth of Massachusetts

Delaware County, Pennsylvania

Narcotics Deaths - Pennsylvania Department of Health
Serum Hepatitis - Pennsylvania Department of Health

Fairfield County, Connecticut

Serum Hepatitis - Connecticut Department of Health

Appendix C

Interrupted Time Series Analysis

Interrupted time series analysis (ITSA) is the principal technique that was applied to data used in this report. The method involves examination of a set of data that have been recorded at regular time intervals, called a time series, for any effects of some policy change. A mathematical model for the time series is proposed to facilitate further analysis, and the adequacy of the model is checked as a final step.

Mathematical methods in themselves will not interpret data. That task is left to the investigator, who might use mathematical results in conjunction with other findings to arrive at a conclusion. A mathematical technique used in this way may be evaluated both on its descriptive power and on the applicability of its underlying assumptions. Both aspects of ITSA are discussed in the description which follows.

A time series model supposes that each observation is influenced to some degree by previous observations, previous random perturbations in the system, and a new random perturbation. Thus, no observation is "memoryless", or independent of its past. For example, the number of hepatitis cases occurring in July may very well be dependent on the number of cases in June plus random new July conditions. The magnitude of these influences completely determines the mathematical model to be used.

An intervention effect in a time series that ITSA will recognize is a deviation from the established trend whose origin coincides with a chosen intervention date. If the policy of interest is not expected to have a lasting effect, ITSA also looks for the time series' eventual return to the pre-intervention trend. To measure such an effect, one picks that level of the effect which will produce the best overall fit between the hypothesized model and the observed data. Note that if initially the model is inadequate, then the best fit will be chosen from a poor lot. More than one model might seem plausible at first, but most are subsequently rejected in the final stage of the analysis, discussed later. For each model proposed, the estimated intervention effect is now examined as though it were a somewhat fuzzy, or random quantity. How much randomness one allows the estimate will reflect the amount of confidence one has in it. The question still arises whether or not the best estimate of an effect appears different from zero effect by the random chance inherent in all real situations. The test used to answer this question is a conservative one which favors no intervention effect at all. For the test to accept an effect as real, there must have been a marked and persistent change in the pattern of the time series after the intervention date, a suitable criterion for judging effects of a social policy change. Short-term movements, while in themselves interesting, are considered by the test to be ephemeral and insignificant in the context of the entire time series.

Deciding among several models is done by looking at the quality of their fits to the data. The lack of fit or "residual" time series, formed by subtracting the predicted from the observed time series, is tested for its resemblance to "white noise". "White noise" is a completely random time series that fluctuates about a zero level with no discernible pattern and with small fluctuations more frequent than large ones. If the residuals series has a strong resemblance to white noise, then the model is deemed adequate. The statistical tests used to help discriminate between good and bad fits are the chi-square and the autocorrelation results. The autocorrelations of residuals are measures of relatedness of one residual to another. If they are not related, in other words independent of the time of their occurrence, then the first criterion for resemblance to white noise has been met. The chi-square test assumes an affirmative result from the autocorrelations. The residuals are arranged in ascending order of magnitude and their distribution examined. If most are clustered about zero, and fewer and fewer occur as one moves from zero in either direction, then the chi-square test will report similarity to white noise.

Data Specifications for ITSA

One must be judicious in application of ITSA to time series. A minimum of fifty observations, with the intervention date as close to the middle as possible, are necessary to have a good chance of isolating an intervention effect. For this report, only indicators which were available on a monthly basis for at least four years were used. For convenience, however, only quarterly data are presented on the charts.

Adjustments of Data

Some phenomena are of a seasonal nature, making it more difficult to distinguish a policy effect from seasonal fluctuations. In this case the time series may be "deseasonalized" before further analysis is undertaken. A surprising finding is that very few series presented in this report showed any seasonal nature at all.

Another set of phenomena to be dealt with are the small, short-term increases or decreases in the level of a time series that contribute little information about an intervention effect. One might choose to reduce the random variability by "smoothing" the data by assigning the averages of every succession of three observations to the middle time point of the three. July's datum would be the average of the actual observations from June, July, and August. August's datum would be the average of July, August, and September actual observations, and so on. Successive observations in the constructed "three-point moving average" series will have more correlation than they did in the raw data series, but small peaks and valleys of the raw series will have been clipped off and filled in to depict overall trends more clearly.

Assignment of Intervention Dates

Another issue that must be decided is where to assign the intervention date, as the impact of a policy on a time series may very well not coincide with the enactment of the policy. For example, it has been proposed that, in general, persons who contract serum hepatitis as a result of intravenous drug use began their habit a year or two before contracting the disease. Thus, if serum hepatitis cases are used as an indicator of incidence of prolonged heroin use, then the number of cases reported in September of 1973, say, will actually reflect the number of new heroin users in early 1972. Unfortunately, if a September, 1974, intervention date is used to test the effects of the September, 1973, drug law on new heroin users, then the small number of post-intervention observations may compromise any results. One factor acting in an investigator's favor, however, is that an impact of the drug law on hepatitis case rates in New York State is most likely to be gradual. In this instance ITSA results will not be significantly altered, but their reliability increased, if a May or June, 1974, intervention date were to be picked.

The next problem is to decide upon before and after periods for time series that are related to the series of interest but came from sources not directly affected by the intervention. Specifically, for areas outside New York, it is desired to assign an "intervention" date so that effects in these areas and effects in New York may be compared. With a measure of relatedness called the lag correlation coefficient, one can determine the time delay between movements of a series in New York and similar movements of its counterpart in a given outside area. The computed delay was then applied to the intervention date in New York to get a comparable time in the given outside locality. The intervention date used for each indicator is presented in the tables of results on pages 91 and 92.

Technical Description of Interrupted Time Series Analysis (ITSA)

The long time series data available on the drug use indicators were subjected to a detailed time series analysis. The time series were examined to see if after an intervention (the passage of the drug laws, 1973), the process generating the time series was changed. The basic premise was that the law would alter the level of the drug abuse indicator, which is used as a proxy for the variable of interest, namely level of drug use.

There are three stages to the analysis. At the first stage, a model is identified which describes the observed time series. The models used in this study belong to the class of mixed autoregressive moving average models. These models embrace a wide class, and have been used most extensively in statistical time series analysis (see Box and Jenkins (1) for a wide variety of applications).

The idea is to represent each value of the time series by a weighted sum of the previous p values of the series (the autoregressive component), plus a weighted sum of the previous q random disturbances (the moving average component), plus a current disturbance.

In addition, before p and q can be determined, the observed series must be transformed to a weakly stationary one, that is, one that has an expected value and variance that is constant over time. This can be achieved by choosing an appropriate order of differencing, d. Let ∇ be the difference operator, where $\nabla Y_t = Y_t - Y_{t-1}$,

$$\begin{aligned}
\nabla^2 Y_t &= \nabla(\nabla Y_t) \\
&= \nabla(Y_t - Y_{t-1}) \\
&= \nabla Y_t - \nabla Y_{t-1} \\
&= Y_t - 2\,Y_{t-1} - Y_{t-2}
\end{aligned}$$

$$^{d}Y_t = \sum_{K=0}^{d} (-1)^k \frac{d!}{K!\,(d-K)!} Y_{t-k}.$$

The identification of p, d, and q is done by numerical and graphical inspection. Next, suppose an action is taken at a time T, the intervention point, which is expected to alter the level of the series. Then the model fitted to the observed times series can be expressed as:

$$\begin{aligned} Z_t &= \nabla^d(X_t - L) \\ &= \sum_{j=1}^{p} \varphi_j Z_{t-j} + \sum_{i=1}^{q} \theta_i U_{t-1} + U_t \text{ for } t=1, \ldots, T \end{aligned}$$

$$\begin{aligned} Z_t &= \nabla^d(X_t - L - \delta) \\ &= \sum_{j=1}^{p} \varphi_j Z_{t-j} + \sum_{i=1}^{q} \theta_i U_{t-i} + U_t \quad \text{for } t=T+1, \ldots, n, \end{aligned}$$

where p, d, and q are as previously defined,

L is the level of the series before time T,

δ is the change in the level after time T,

$\{\varphi_j\}$ and $\{\theta_i\}$ are the autoregressive and moving average weights described above,

and $\{U_k\}$ are random, independent disturbances that are identically distributed normal variables with mean zero and variance σ_u^2.

In the second stage, the values of L and δ, the level and intervention effect, are estimated. To do this, the time series $\{Z_t\}$ must first be transformed to a linear model:

$$W_t = \begin{cases} b_1 L + U_t & \text{for } t=1, \ldots, T \\ b_1 L + b_2 \delta + U_t & \text{for } t=T+1, \ldots, n. \end{cases}$$

The terms b_1 and b_2 are constants determined by a particular choice of values for $(\varphi_1,\ldots,\varphi_p,\theta_1,\ldots,\theta_q)$. The standard least squares estimates of L and δ can now be obtained. The criterion for the "best" choice of $(\varphi_1,\ldots,\varphi_p,\theta_1,\ldots,\theta_q)$ is the one that minimizes the mean square error of the fitted linear model. Fortunately, the stationarity condition puts constraints on their set of admissible values so that a search for the "best" choice, while time consuming, does eventually terminate.

In the third and last stage of the analysis, the adequacy of the model is checked. The distribution of the residuals $\{U_t\}$ are tested for similarity to the normal distribution. If the model is adequate, then the residuals should have no discernible pattern of variation. The pre- and post-intervention residuals should be checked separately. If r_k is the k^{th} lag autocorrelation of the residuals, then $(T/2)\sum_{k=1}^{T/2} {r_k}^2$ is distributed approximately chi-square with $(T/2)-p-q$ degrees of freedom, and can be used as a test for the resemblance of the pre-intervention residuals to white noise. The same computation method for the post-intervention residuals produces a chi-square statistic with $\left[(n-T)/2\right]-p-q$ degrees of freedom. For more details of all three stages in the analysis, see references (1), (2), and (3).

The ITSA stages are summarized below:

(i) Identify the model for a given indicator, by determining (p,d,q,).

(ii) Fit the model to the data, by estimating the parameters which describe the process.

(iii) Check whether the fitted model is adequate, by testing whether the residuals from the fitted model can be regarded as "white noise", i.e. the residuals are distributed normally.

(iv) If the residuals cannot be regarded as "white noise", there are two possible causes. The model may have been incorrectly identified, in which case one should repeat steps (i) to (iii). On the other hand, it may be that separate models for $t \leq T_1$ and $t \geq T_1$ are required. This case occurs much less frequently than the first, and detecting an intervention effect is less rigorous.

It should be noted here, that the intervention effect postulated is a long term one, a permanent shift in the level of the process. The intervention effect can be modeled in several ways (see (4), and (3) and particularly (4) for a very readable account of the methodology). It is assumed that the intention of the legislature was to reduce the level of drug use on a long term basis, and not a short term, one-period effect.

References

[1] Box, G.E.P. and Jenkins, G.M. Time Series Analysis, Forecasting, and Control. San Francisco: Holden Day, 1970.

[2] Box, G.E.P. and Tiao, G.C. "Intervention Analysis with Applications to Economic and Environmental Problems Journal of American Statistical Association, Vol. 70, No. 349, March, 1975, pp. 70-79.

[3] Glass, G.V., Wilson, V.L, Gottman, J.M. Design and Analysis of Time Series Experiments. Boulder: Colorado Associated University Press, Boulder, 1975.

[4] Campbell, D.T. "Measuring the Effects of Social Innovations by Means of Time Series." Statistics: A Guide to the Unknown. Tanur, J.M., et al, eds. San Francisco: Holden Day, 1972, pp. 120-129.

The Poisson Probability Model:

Another method used to detect level changes is to fit a Poisson probability distribution to the frequency spectrum of the pre- and post-intervention data. Then several hypothesis tests for difference in the two Poisson parameters may be conducted.

Specifically, let $x_1,\ldots,x_T$ and $x_{T+1},\ldots,x_N$ be independent observations with intervention at time T, and let $P_{11},P_{12},\ldots,P_{1K},\ldots$ and $P_{21}, P_{22},\ldots,P_{2K},\ldots$ be their sample frequency distributions. Chi-squared tests are performed on each to see if they fit a Poisson distribution, i.e. that

$$P_{jk} = \text{Prob}\ (x_t=K) = \frac{\lambda_j^{k}\ e^{-\lambda_j}}{K!},$$

with $j=1,2$ and $k=0,1,2,\ldots$ and $1 \leq t \leq N$ with λ_1 and λ_2 estimated by the two sample means.

If both fits are good, two tests for $\lambda_1=\lambda_2$ can be performed. One involves a chi-square test for fit of the frequency spectrum for the post-intervention data $x_{T+1},\ldots,x_N$ to a Poisson distribution with parameter λ_1. A second is to test the probability of observing $x_{T+1},\ldots,x_N$ given that λ_1 is the true parameter for the process.

Explanation of Tables

Tables I and II present the results of the tests performed on all indicators amenable to statistical analysis. The date above each result is the one at which one might expect to see the first observable effects of the law. Since a real effect is more likely to be gradual than dramatic, the results quoted in the table will still hold if the dates are changed by two or three months. If two dates are mentioned, the first arises from the premise that there was a fairly immediate effect of the law, and the second supposes a delayed effect.

Dates used for out-of-state areas were derived from analysis of their pre-intervention time shift with New York. This was done by first choosing several intervention dates, in increments of three months, for a New York indicator series. For each date, the lag correlation coefficient for New York and each of its comparison areas was computed for the pre-intervention data. The lag which produced the highest coefficient was deemed the best time shift. The different choices of dates did not affect the choice of lag but the intervention date which showed the clearest results was then chosen for use in the time series analyses. For example, before September 1973, Maryland hepatitis data was found to lag behind New York's by four months. If a September 1973 impact date is chosen for New York hepatitis cases, then, a January 1974 date will be chosen for Maryland hepatitis.

The results below include the chosen intervention date, the model used, the estimated parameter values, and significance statistics. The model will be specified in the form (p,d,q) followed by the value of ϕ or θ for which the square error is minimized.

The t-statistics for estimates of the level of the series, L, and change in level following intervention, δ, are given, as are the chi-square statistics of the fit of the pre- and post-intervention residuals to white noise. The degrees of freedom for the chi-square statistics are given, and for the t-statistics the degrees of freedom are the number of observations minus the number of parameters estimated.

In several cases, to improve the adequacy of the model, two parameters were included in addition to L and δ. They are μ, the "deterministic drift" of the series, and Δ, the change in the deterministic drift following intervention. They were used because the disturbances $\{U_t\}$ had a non-zero mean μ, causing the series to drift μ units per unit of time. The model was improved if a transformed set of disturbances $\{a_t\}$ was used, with $a_t=U_t-\mu$ before intervention and $a_t=U_t-\mu-\Delta$ after intervention. Now $\{a_t\}$ satisfy the assumptions made about the disturbances, described in the previous pages.

TABLE I

RESULTS OF STATISTICAL TESTS ON INDICATORS FOR NEW YORK STATE AND COMPARISON STATES

Indicator	Int. date	Model	Values	T-stat.	X^2	d.f.
New York State						
Serum hepatitis	1/73	(1,1,0)φ=-.53	L= 141 δ= 6.64	6.77 0.319	9.36 18.18	17 23
	9/73	(1,1,0)φ=-.54	L= 141 δ= 1.79	6.77 0.0858	16.36 18.75	22 19
Narcotics deaths	1/73	(1,0,0)φ=0.49	L= 59.6 δ= 8.82 μ= 5.35 Δ= -15.0	2.47 3.37 0.420 -1.18	15.58 10.66	18 24
	9/73	(1,0,0)φ=0.62	L= 61.4 δ= -5.72	14.3 -1.09	13.03 17.96	22 19
Treatment Admissions (State funded programs)	9/73	(1,1,0)φ=0.20	L=2540 δ= 231	5.44 0.490	14.95 2.94	9 9
Treatment admissions (State operated programs)	9/73	(1,0,0)φ=0.82	L= 281 δ= 5.00	7.28 0.110	5.34 2.83	9 9
New York State excluding New York City						
Serum hepatitis	1/73	(0,1,1)θ=0.65	L= 21.6 δ= -1.57	2.41 -.176	8.49 16.45	17 23
	9/73	(0,1,1)θ=0.66	L= 21.6 δ= 2.69	2.47 0.310	9.04 1.15	21 12
Narcotics deaths	1/73	(1,0,0)φ=0.25	L= 3.07 δ= 0.779	5.97 1.16	6.80 10.88	22 19
	9/73	(1,0,0)φ=0.25	L= 3.07 δ= 0.749	5.89 1.09	9.38 13.02	18 24

Table I (continued)

Indicator	Int. date	Model	Values	T-stat.	X^2	d.f.
Maryland						
Narcotics deaths	11/73	(0,0,1)θ=-.20	L= 4.90 δ= -1.08	10.1 -1.44	6.13 1.81	16 11
Serum hepatitis	1/74	(0,1,1)θ=0.70	L= 12.1 δ= 0.440	1.69 0.060	4.43 2.98	23 12
Admissions to detox. and meth. maint.	12/73	(1,[illegible],1)φ=0.20 θ=0.60	L=242 δ= -6.99	6.04 -.170	0.93 1.87	10 11
Admissions to drug-free programs	12/73	(1,0,0)φ=0.68	L=446 δ= -3.80	9.69 -.640	1.55 3.84	10 11

TABLE II

RESULTS OF STATISTICAL TESTS ON INDICATORS FOR NEW YORK CITY AND COMPARISON CITIES

Indicator	Int. date	Model	Values	T-stat.	X^2	d.f.
New York City						
Serum hepatitis	1/73	(1,1,0) φ=-.51	L= 126	7.02	8.31	13
			δ= 0.309	0.174	7.42	13
	9/73	(1,1,0) φ=-.50	L= 121.2	6.63	7.73	21
			δ= -9.00	-.490	13.38	12
	8/74	(1,1,0) φ=-.50	L= 121	6.62	10.30	27
			δ= 4.00	0.220	5.99	7
Narcotics deaths	1/73	(1,0,0) φ=0.51	L= 59.1	2.63	14.31	18
			δ= 6.04	0.269	10.46	24
			μ= 3.91	0.338		
			Δ= -13.5	-1.16		
	9/73	(1,0,0) φ= .62	L= 63.9	3.39	13.35	22
			δ= 19.5	1.03	12.10	19
			μ= -.926	-.122		
			Δ= -13.32	-1.69		
Admissions to meth. maint.	9/73	(1,1,0) φ=0.08	L= 160.3	1.47	4.84	16
			δ= 34.7	0.320	7.25	14
Admissions to amb. detox. prog.	9/73	(0,1,1) θ=-.12	L= 90.0	0.270	8.31	11
			δ= -7.50	-2.29	3.45	14
	9/73	(0,0,1) θ=-.52	L=1340	11.6	9.51	12
			δ= 353	2.18	3.07	12
Baltimore						
Narcotics deaths	11/73	(0,0,1) θ=-.22	L= 3.75	8.33	3.35	16
			δ= -1.00	-1.43	1.33	11
	2/74	(0,0,1) θ=-.18	L= 3.82	13.5	10.00	24
			δ= -1.00	-1.94	2.27	10

Table II (continued)

Indicator	Int. date	Model	Values	T-stat.	X^2	d.f.
Washington, D.C. Narcotics deaths	11/73	(0,1,1)θ= .72	L= 2.97 δ= -.640	2.97 -.440	5.36 4.03	22 11
	2/74	(1,1,1)ϕ=0.00 θ= .70	L= 4.24 δ= 0.810	2.75 0.520	5.59 2.81	23 9
Admissions to all modalities of treatment	11/73	(0,1,1)θ=0.52	L= 543 δ= -5.50	5.23 -.050	2.05 5.89	12 11
	8/74	(0,1,1)θ=0.60	L= 539.2 δ= -7.2	5.94 -.08	2.12 5.23	12 11
Philadelphia						
Serum hepatitis	9/73	(1,1,0)ϕ=-.46	L= 19.8 δ= -.100	5.07 -.03	3.51 8.74	15 12
	8/74	(1,1,0)ϕ=-.44	L= 19.7 δ= -9.58	5.31 -2.58	2.12 2.61	21 7
Chicago						
Serum hepatitis	3/74	(0,1,1)θ=0.62	L= 9.94 δ= 19.5	1.50 2.94	11.63 3.00	24 9
	1/75	(0,1,1)θ=0.52	L= 8.46 δ= 0.280	1.11 0.040	10.85 0.42	29 4
Drug deaths	2/74	(1,0,0)ϕ=0.56	L= 12.5 δ= 8.17	7.47 3.11	7.22 5.22	18 10
Boston						
Admissions to meth. maint. prog.	11/73	(1,0,0)ϕ=0.22	L= 50.3 δ= 6.52	8.58 0.700	4.38 2.51	18 11
	2/74	(1,0,0)ϕ=0.22	L= 50.2 δ= 6.58	8.95 0.690	6.50 2.51	20 10

Table II (continued)

Indicator	Int. date	Model	Values	T-stat.	X^2	d.f.
Newark, New Jersey						
Admissions to all modalities of treatment	9/73	(1,1,0)φ=-.24	L= 176	7.66	3.63	15
			δ= 0.320	0.010	2.67	11
Admissions to meth. maint.	9/73	(1,0,0)φ=0.24	L= 6.26	3.17	2.12	15
			δ= -4.22	-1.44	5.06	12
Admissions to amb. detox. prog.	9/73	(1,0,0)φ=0.86	L= 13.8	2.13	8.84	21
			δ= -.610	-.070	4.39	12

2

CRIME COMMITTED BY NARCOTICS USERS IN MANHATTAN

A Staff Working Paper
of the
Drug Law Evaluation Project

This paper was prepared by Majda I. Sajovic and Sandra Karpis, with the assistance of David Cummins, Andrea Pedolsky, and Peter Poryzees.

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CRIME COMMITTED BY NARCOTICS USERS IN MANHATTAN

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CRIME COMMITTED BY NARCOTICS USERS IN MANHATTAN

One objective of the 1973 drug law was to reduce crime committed by heroin users. This paper presents the findings of a study of changes in the magnitude of felony crimes committed by narcotics users in Manhattan between 1971 and 1975. The crimes included are all felonies which directly affect a victim (possession of stolen property and drug offenses, for example, are excluded while robbery and burglary are included). These crimes constitute 90% of the felonies reported to the police in Manhattan each year.

If the 1973 drug law had been effective, there would probably have been a reduction in the proportion, if not the total number, of non-drug felonies committed by narcotics users. Even if total (non-drug) crime increased during the period, and even if the total number of non-drug felonies committed by users increased, the proportion of non-drug felonies committed by users should have decreased. If users had been deterred from narcotics use, they should also have been deterred from committing at least some money-generating crimes previously committed in order to support their habits. Even if the same individuals committed crimes under the new law, some of them would no longer be users of narcotics, and so the crimes they committed would not be classified as user crimes.

I. Findings about Crime Committed by Narcotics Users

Non-Drug Felony Crime

Narcotics users were responsible for a steadily decreasing proportion of the non drug felony crime committed in Manhattan between 1971 and 1975. The total number of non-drug felonies committed by users dropped between 1971 and 1973, and remained stable between 1973 and 1975.

Charts I and II document these changes. Chart I shows that in 1971, some 52% of the non-drug felonies occurring in Manhattan were attributable to narcotics users, and 48% were attributable to non-users. By 1975, users were committing 28% of these crimes while non-users were committing 72%.*

Changes in the volume of non-drug felonies, as well as changes in the total number attributable to users, addicts, and non-users** are shown on Chart II. On this Chart, the crimes attributable to users and to non-users add to total crimes committed. Crimes attributable to addicts are included in crimes attributable to users.

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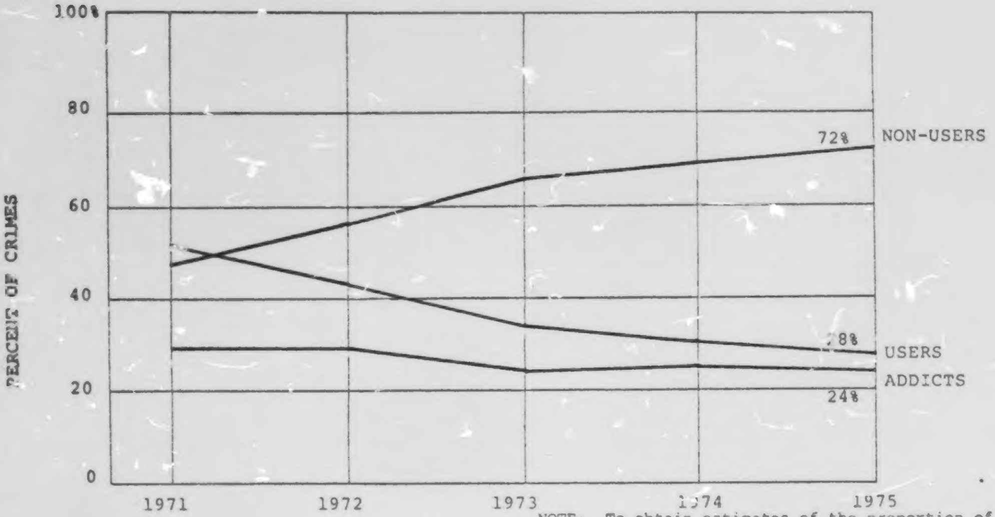
*Note that Manhattan is not typical of New York City as a whole, or of other cities. The high proportion of crime attributable to users might be matched in Brooklyn or the Bronx (although there is no data available for those boroughs) but almost certainly are not matched in any other county in the State.

**Addicts are pragmatically defined here as those persons requiring detoxification from narcotics drugs. Non-addicted users are individuals with recent evidence in their record of narcotics use but who did not require detoxification in jail. Users include both addicts and non-addicted users of narcotic drugs. All others, including non-narcotic drug users, were classified as non-users for this study (see Methodology section below).

PROPORTION OF NON-DRUG FELONIES IN MANHATTAN ATTRIBUTABLE TO ADDICTS, USERS, AND NON-USERS, 1971 - 1975

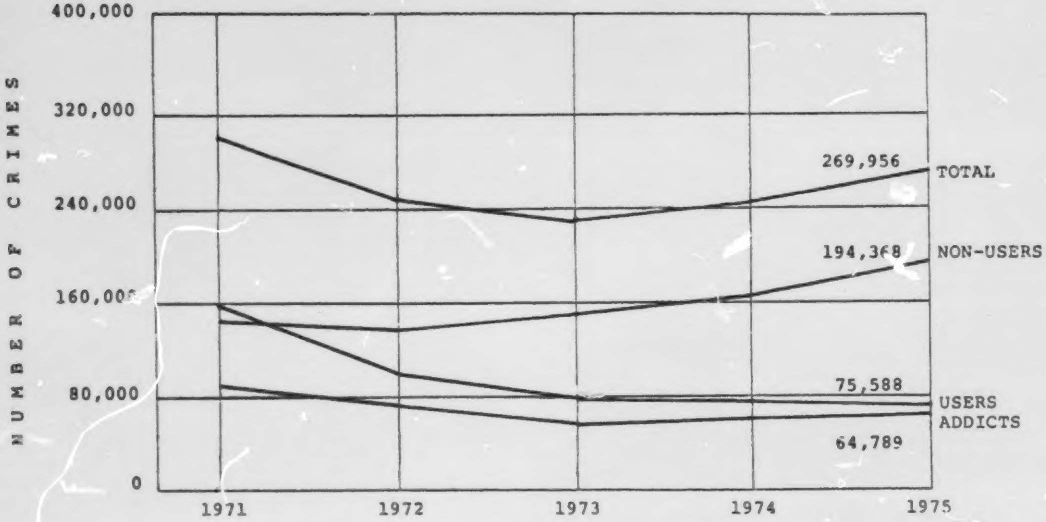


NOTE: To obtain estimates of the proportion of total non-drug felonies attributable to narcotics users, crimes against the person, robbery and burglary and grand larceny were combined. Together, these offenses account for more than 90% of the felonies reported to the Manhattan police each year. Crimes involving weapons, drugs and possession of stolen property could not be included because there are no reliable complaint figures for these offenses.

Source: Drug Law Evaluation Project Survey

CHART II

TOTAL NUMBER OF NON-DRUG FELONIES IN MANHATTAN ATTRIBUTABLE TO ADDICTS, USERS, AND NON-USERS, 1971 - 1975



Source: Drug Law Evaluation Project Survey

The Chart shows that:

-- The total number of non-drug felonies committed in Manhattan decreased between 1971 and 1973, and increased between 1973 and 1975.

-- The total number of non-drug felonies attributable to narcotics users (including addicts) declined markedly between 1971 and 1973 and then remained stable.

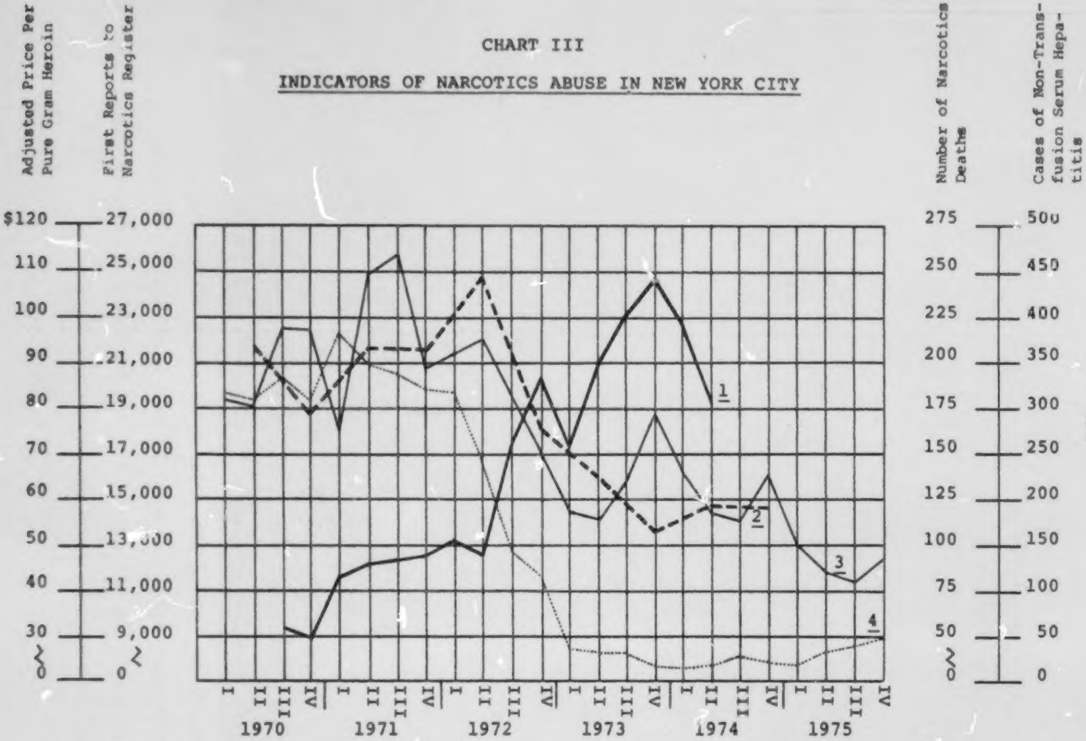
-- The total number of crimes attributable to addicts declined from 1971 through 1973, and then increased slightly during the last two years.

-- After falling slightly between 1971 and 1972, total non-drug felonies attributable to non-users increased each year between 1972 and 1975.

The decline in user crime, which would be expected to occur as a result of a decline in narcotics use, corresponds roughly to the movement of other indicators of narcotics use for the same period. Narcotics deaths, cases of serum hepatitis and reports to the New York City Narcotics Register all indicated that narcotics use peaked in New York City between 1970 and 1972 and then declined to a relatively stable level during the next three years (Chart III). Data on user crime reflect the same pattern. User crime declined during 1972 and 1973, and remained at roughly the same level through 1974 and 1975.

CHART III

INDICATORS OF NARCOTICS ABUSE IN NEW YORK CITY



1 - Adjusted Price Per Pure Gram Heroin: Public Research Institute
2 - First Reports to Narcotics Register: The City of New York, Department of Health
3 - Number of Narcotics Deaths: The City of New York, Department of Health
4 - Cases of Non-Transfusion Serum Hepatitis: The City of New York, Department of Health

Crime attributable to addicts (which are included in the user category) also declined between 1971 and 1973, but fell less than crime attributable to the larger user group.

Though the data seem to be an indication that narcotics use was higher in 1971 than it was in 1975 in Manhattan, one can not be certain that the 1973 law was responsible for the reduction in the proportion of non-drug felonies attributable to narcotics users since 1973. Comparisons of the narcotics indicators for New York City with those for out-of-state areas is crucial. For example, if large cities in other states without stringent drug laws also exhibit downward trends in narcotics use levels, then the importance of the laws to the New York State situation is likely to be negligible. However, if trends in nearby metropolitan areas show an increase in narcotics use while New York State indicators continued their decline, then it would be reasonable to point to the laws' role in the New York trends. Out-of-state comparisons are the next task of the Project. Nevertheless, the present data do indicate that some factor or factors are damping the criminal activities of narcotics users. The 1973 law may be one of these factors.

Robbery and Burglary

When robbery and burglary are isolated, the data look very similar to the findings just described for all crimes:

a decline in both the proportion and the total number of robberies and burglaries attributable to narcotics users in Manhattan between 1971 and 1975.

As can be seen from Chart IV, the share of robberies and burglaries attributable to users dropped from 53% in 1971 to 29% in 1975, while the proportion attributable to non-users increased from 47% in 1971 to 71% in 1975.

The lower panel of Chart IV translates these proportions to numbers of crimes by applying the shares for users and non-users to the number of robberies and burglaries actually committed (complaints to the police expanded to reflect the rates at which crimes are reported to the police). Robbery and burglary are the two revenue-producing felonies that narcotics users (and other offenders as well) commit most often. The total number of robberies and burglaries committed in Manhattan dropped from slightly more than 140,000 in 1971 to about 100,000 in 1973 and then gradually increased to a rate of about 120,000 a year by 1975. The Chart shows the consistent decline in the total number of robberies and burglaries attributable to users.

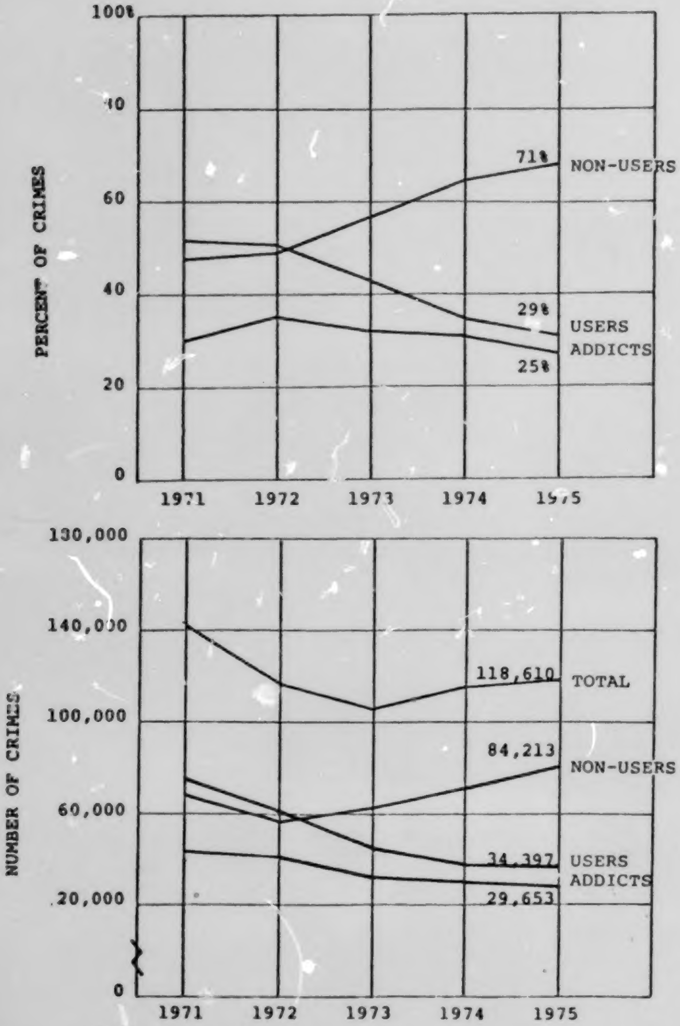
-- The total number attributable to narcotics users fell by half, from 76,000 in 1971 to 34,000 in 1975.

-- The total number attributable to addicts remained stable at about 30-40,000 for the entire period.

-- The total number attributable to non-users decreased from 67,000 in 1971 to 56,000 in 1972 and then increased to 84,000 by 1975.

CHART IV

ROBBERIES AND BURGLARIES IN MANHATTAN ATTRIBUTABLE TO ADDICTS, USERS, AND NON-USERS, 1971 - 1975



Source: Drug Law Evaluation Project Survey

It is noteworthy that crimes committed by the narcotics user group declined over the five year period until, in the last two years, the users were responsible for only a slightly larger volume of robberies and burglaries than the addict group. However, this trend appears to have begun before 1973, and has not intensified since.* It is reasonable to expect that the law's greatest deterrent effect would be on the part-time narcotics users because they may not yet be so immersed in use that they cannot voluntarily cut down their participation. Even if they had stopped using narcotics, they might have continued committing crime, but they would now appear in the analysis as non-users. The addicts -- the regular users of narcotics who require detoxification treatment services -- did not significantly reduce their criminal activities from 1973 to 1975, although in the face of rising crime in general, they apparently did not increase these activities either.

The fact that the number of robberies and burglaries attributable to addicts remained the same for the five year period seems to indicate that the hard-core narcotics user was the person least affected since 1971 by factors influencing the use of narcotics.

---

*It is difficult to classify 1973 itself as either a "pre-law" or "post-law" year because, while the laws were in effect for only four months, a good deal of the first eight months of the year were marked by an aggressive publicity campaign warning about the effects of the new laws to come. To account for this, a weighted average of pre-law and post-law correction factors applied to 1973 to account for the fact that the old laws applied for the first eight months and the new laws for the last four months of the year. Any shifts in activity caused by publicity about the laws would be evident in the distrivutions of prison population charge and user-status. However, the differences in results obtained using the pre-law and post-law correction factors are not great.

It was not possible to make estimates of the actual number of revenue-raising crimes other than robbery, burglary, and grand larceny. However, an examination of the frequency of charges for other property crimes facing drug users in jail showed a downward trend in charges very similar to the trend exhibited for robbery and burglary.

Of related interest is the finding that users and non-users in jail were equally likely to be facing weapons charges. There were no significant changes over the five year period in the frequency with which users were charged with weapons offenses.

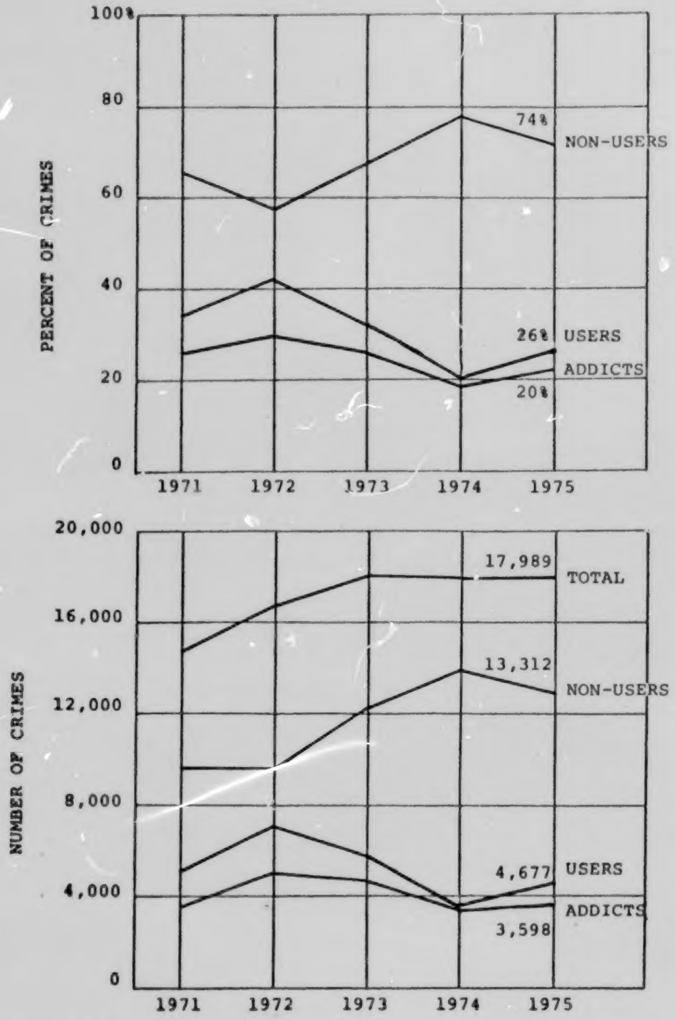
Serious Crimes Against the Person

Serious crimes against the person include the major violent crimes. This groups excludes robbery, which, although having attributes of violent crimes, is grouped with burglary for the purpose of this analysis. The number of serious crimes against the person reported to the police in Manhattan increased by 20% between 1971 and 1973, and was stable from 1973 through 1975.

The findings (Chart V) indicate that there is no definite trend in the proportion of serious crimes against the person attributable to users, as there is for robbery

CHART V

SERIOUS CRIMES AGAINST THE PERSON IN MANHATTAN ATTRIBUTABLE TO ADDICTS, USERS, AND NON-USERS, 1971 - 1975



Source: Drug Law Evaluation Project Survey

and burglary. Despite large year-to-year variation, the proportion of these crimes accounted for by users has remained at roughly one-third. This proportion is no longer significantly below the share of robberies and burglaries committed by users (because, as noted above, those offenses have declined through the years).

When translated to actual crime, this evidence implies that the increase in serious crimes against the person since 1972 is largely attributable to non-users. The addicts' share of these crimes fluctuated somewhat, but it remained at a roughly stable level, similar to that of the user group as a whole. As Chart V shows, the total number of serious crimes against the person in Manhattan increased from about 15,000 in 1971 to about 18,000 in 1975. Crimes attributable to non-users rose from just under 10,000 in 1971 to a peak of 14,000 in 1974 and then dropped slightly in 1975.

The number attributable to users was the same in 1975 as it had been in 1971, about 5,000. Crimes against the person attributable to addicts (a subset of the user group) were highest in 1972 and 1973, and then returned to the 1971 level in 1974 and 1975.

II. Other Findings

As byproducts of the Project's examination of user crime, several interesting analyses were possible. These are summarized in the remaining sections.

Detention Rates for Narcotics Users and Non-users

Interviews with judges and defense attorneys revealed that they felt narcotics users were sent to detention at higher rates than non-users, either because users could not meet bail conditions as easily as non-users, or because judges regarded them as poor risks and therefore set high bail. As Table I illustrates, 74% of users facing any felony charge were sent to detention in 1972-73 while only 50% of non-users facing felony charges were sent to detention during the same period. In 1974-75, a total of 79% of the users facing all felony charges were sent to detention compared to 51% of the non-users. Users not only have higher detention rates than non-users, but their detention rates have increased slightly over time.

These findings indicate that under the 1973 drug law, detention rates in drug cases increased only for non-users. The detention rates for users facing drug charges remained the same in both periods, although at a much higher level than the non-user rate.

TABLE I

Detention Rates Following Criminal Court Arraignment in Manhattan

	USER		NON-USER		TOTAL	
	72-73	74-75	72-73	74-75	72-73	74-75
Crimes Against Persons	50%	67%*	54%	48%	53%	50%
Robbery and Burglary	89%	90%	52%	63%	64%	68%
Drug Felonies	72%	71%	33%	48%	53%	57%
All other Felonies	75%	80%	50%	42%	54%	47%
Total	74%	79%	50%	51%	56%	56%

---

*Fewer than 10 observations

Notes: Twenty-five cases where detention status was unknown were excluded.
For 72-73, n=277
For 74-75, n=328

Source: Drug Law Evaluation Project Survey

Narcotics Use Among the Jail Population

The data showed that narcotics use among detainees declined through time, but the decline was not nearly as rapid as the fall in the estimates of crime attributable to users.

	1971	1972	1973	1974	1975
Proportion of heroin and methadone users in detention	53%	48%	44%	42%	43%
Crime attributable to users (Chart I)	52%	43%	35%	32%	28%

This difference in the rate of decrease is a reflection of the fact, confirmed by the analysis of detention rates, that users find their way to prison more frequently than non-users.

In most cases, medical records of the detained population made it possible to distinguish heroin users from methadone users. (Persons addicted to either drug are included in the user groups, as they are throughout the study.)

When heroin users are isolated from methadone users, the data reflect both the decline between 1971 and 1973 and the recent stability.

	1971	1972	1973	1974	1975
Heroin users in detention	25%	22%	16%	17%	18%

The figures for methadone users show an anomolous reduction between 1971 and 1973, at just the time when maintenance programs were growing quickly:

	1971	1972	1973	1974	1975
Percentage of the detention population using methadone (no evidence of heroin use)	15%	11%	5%	5%	10%

A possible explanation is that the regulations governing methadone were rigorously enforced, thereby significantly reducing diversion of the drug.

A different estimate of methadone use results when detainees who use both heroin and methadone are added to the figures for those who use only methadone:

	1971	1972	1973	1974	1975
Percentage of the detention population using methadone, with or without heroin	18%	19%	25%	24%	25%

Because of the questionable reliability of this methadone use data, it is most reasonable to use the aggregate numbers combining all users of narcotic drugs. That has been done throughout this study.

Only meager evidence is available about the participation of methadone users in (non-prison) treatment programs. There is no direct information about the frequency with which the City's 30,000 program participants appeared in prison. The New York City Department of Correction has collected information since 1973 which indicates that between one-quarter and one-third of all inmates

(City-wide) who went through detoxification, i.e., the "addict" group in this study, were participating in a methadone maintence program at the time of their arrest. These data suggest that throughout the course of a year, between fifteen and twenty percent of males in the methadone maintenance treatment population are detained (although some of these might be repeat offenders who are arrested more than once in a year).

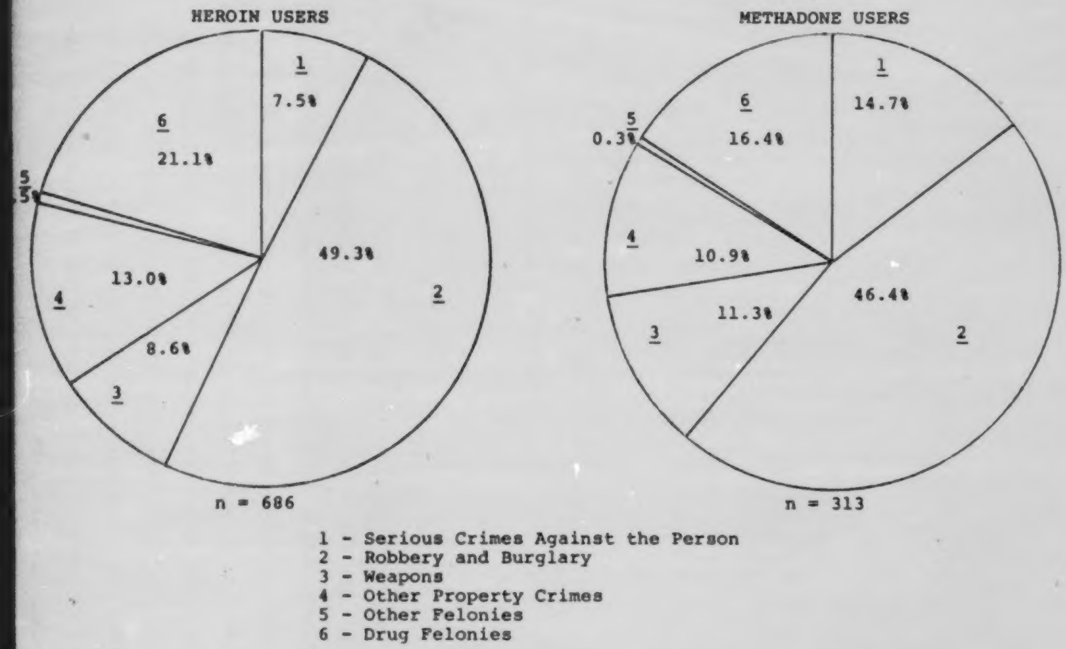
To compare the kinds of crime methadone users are likely to commit with crime committed by heroin users, Chart VI shows the distribution of criminal charges facing these two groups. (Users of heroin and methadone simultaneously are not included in the distributions.) The relatively large sample sizes over the five year period lend credibility to these distributions, even though the relative size of the groups may not be accurate. As shown on the Chart, methadone users are more likely than heroin users to be charged with serious crimes against the person, and are somewhat less likely to be charged with drug offenses. Both heroin and methadone users are about equally likely to be charged with crimes in the other categories.

Number of Youthful Drug Users

Any effective restrictions on the spread of drug use should be accompanied by a decrease in the number of young people using drugs, and this should result in fewer youthful drug users in prison. The data show that the proportion of users among detained persons 21 years of age or younger decreased steadily from 1971 to 1975. This downward trend was in effect before the laws were proposed,

CHART VI

TYPES OF CHARGES FACING HEROIN AND METHADONE USERS IN DETENTION



Source: Drug Law Evaluation Project Survey

and has continued in the post-law period. The proportion of addicts in this age group did not change during the five year period. Here again, it appears that only the non-addicted narcotic users decreased their criminal activities.

For the youthful detainees as a whole, including users and non-users, the distribution of criminal charges shows they are charged with robberies and burglaries at a higher rate, and serious crimes against the person and drug felonies at a lower rate, than older defendants.

III. Methodology

Arrest records in New York State rarely contain information about a person's drug taking behavior. When they do, the information is of questionable reliability. There is one point in the New York City criminal justice system, however, where reliable information of this type is available. Since 1971, doctors in the City's Department of Correction have examined adult males sent to the Manhattan pre-trial detention facility to learn if they are physically dependent on narcotics. Those who are physically dependent on narcotics spend up to three weeks in a detoxification program operated by the Department.

By using data from this and other sources, it was possible to estimate indirectly the changes in non-drug crime committed by narcotics users in New York City between 1971 and 1975.

Narcotics users were defined to include both addicts and non-addicted users. Addicts were defined as those individuals who, when they were jailed in Manhattan, required detoxification from heroin or methadone. Non-addicted users were defined as prisoners whose record indicated they had used heroin or methadone within the three month period preceding detention but who did not require detoxification. All others, including those who used non-narcotic drugs, were defined as non-users.

Limitations of the data restricted estimates of the volume of crime committed by users to two categories: serious crimes against the person; and robbery, burglary, and grand larceny. These offenses constitute more than 90% of the felonies reported to the police in Manhattan each year.

No attempt was made to establish a cause and effect relationship between narcotics use and crime. It is quite possible, for example, that many narcotics users would commit crime even if they did not use drugs. It is not necessary, however, to establish causality in order to evaluate the impact of the 1973 drug law on non-drug felony crimes committed by narcotics users.

The more significant limitations of the study should be noted. The defendants studied were adult males in Manhattan, and the results may not be applicable to other groups of defendants in other locations. Juvenile crime is excluded entirely because court records for offenders below the age of 16 are sealed. Defendants under 16 accounted for approximately 18% of non-drug felony arrests in Manhattan during 1975. Further, the total amount of crime attributable to users has been underestimated because the study focused only on the more serious offenses, and excluded all misdemeanor offenses, e.g. shoplifting.

The apportionment of detainees in each of the major felony categories* between addicts, users, and non-users was the first step in estimating the proportion of serious crime attributable to each group. This was done by sampling 3,500 cases from the Manhattan House of Detention for Men (HDM), also known as the Tombs, from 1971 through 1975.

The proportion of users in detention could not be directly generalized to the proportion of users among those who commit crimes on the street. Narcotics users, for example, might not be arrested or sent to detention at the same rate as they commit felonies on the street. Moreover, various stages of the criminal justice system might respond differently to users and non-users.

---

*There were six major felony catefories, as follows: (1) serious crimes against persons (including homicide, rape, assault, kidnapping) and robbery; (2) burglary; (3) weapons charges; (4) other property charges (including grand larceny, forgery, arson, fraud, possession of stolen property); (5) drug charges; (6) other felonies (including bribery, bail jumping, and gambling).

If an individual had more than one felony charge lodged against him, he was categorized by the felony that ranked highest in the New York State Penal Code. When a person was charged with two felonies of the same penal code rank, he was classified by the felony that ranked highest according to the above ordering: e.g. if a detainee was charged with a felony in category (2) and another in category (4), he would be classified under category (2).

The data from the HDM were adjusted to account for different treatment of narcotics users and non-users at several stages in the criminal justice system. These adjustments are outlined below.* The adjustments are listed in an order which generalizes the sample (from HDM) to crimes on the street. The criminal justice process itself works in the opposite direction, i.e. from the actual crime, through a report of that crime to the police, arrest, arraignment in court, and, finally, detention.

1. Users and Non-Users after Arraignment

The distributions of felony charges facing detainees were first adjusted for variations between detention rates for addicts, users, and non-users,** because it was expected that there were differences in this rate between the groups. The detention rate is defined as the ratio of defendants detained to defendants arraigned in court (usually expressed as a per cent or a decimal). The rate is under 100% because many arraigned defendants are released on bail.

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* A fully detailed research methodology for this study is on file with the National Criminal Justice Information and Statistical Service of the Law Enforcement Assistance Administration in Washington, D.C.

**The only stage in the analysis where a distinction could be drawn between addicts and non-addicted users was in the HDM. After that point, the charge distributions for addicts and non-addicted users were treated identically; that is, the same adjustment factors were applied to both groups at each stage. The differences between addicts and non-addicted users thus derive from their charge distributions in jail.

Detention rates for users and non-users were determined by analyzing two samples of felony cases in Manhattan Criminal and Supreme Court records, one covering a 14 month period before the 1973 law was enacted, and one covering a 14 month period after the law was in effect. User and non-user detention rates were determined from court records, which contain information about user status and about whether defendants are detained, released on bail, or released on their own recognizance (paroled). As shown on Table I above, users were generally sent to detention at a higher rate than non-users. Furthermore, this was true both before and after implementation of the new law.

When the detention rates for each user group were applied to the respective distributions of felony charges facing those groups, the result was a distribution of felony charges facing users and non-users following arraignment.

2. Users and Non-Users Charged with Felonies before Arraignment

The next step was to convert users and non-users facing felony charges after arraignment to users and non-users entering arraignment with felony charges. The former were known from step one.

To obtain the proportions of users and non-users entering arraignment with felony charges, the rate at which felonies survive arraignment in Criminal Court had to be determined. This was done by collecting two samples from the Manhattan Criminal Court records, one from the period before the drug law was enacted, and one from the period afterwards. These records were examined for evidence of reduction or dismissal of felony charges during arraignment, and from them a "survival rate" for felony charges at arraignment was computed. When this rate was divided into the number of felonies surviving arraignment, the resulting figure was the number of felonies entering arraignment.

The proportions of users and non-users who did not have their charges reduced below a felony at arraignment were known from the sample of Criminal Court records described in step one. In order to distribute this number of felonies entering arraignment between users and non-users, another pair of samples had to be collected in the Criminal Court: pre- and post-law samples of those persons who were known to have had their charges reduced at arraignment. These records were analyzed for user status information, so that the proportions of users and non-users having their charges reduced at arraignment could be determined.

Together, these samples permitted computation of the proportions of users and non-users who faced felony charges upon entering arraignment.

Results of this adjustment showed that a higher proportion of users than of non-users had felony charges reduced or dismissed before the law went into effect; but, under the new law, the proportion of users having felonies reduced at arraignment was lower than the proportion of non-users who had charges reduced.

3. Users and Non-Users Arrested

The only stage in the court system between criminal court arraignment and arrest at which felony charges can be reduced or dismissed is the complaint room. The complaint room is the place where the prosecutor first encounters a defendant and first evaluates the case.

From a recent study*, it is known that about two per cent of all felony arrests are dropped in the complaint room. Therefore, in order to obtain estimates of users and non-users arrested for felonies, the figures obtained for felony charges entering arraignment (step 2 above) were divided by 0.98. The result represents the number of felony arrests for each user group.

It was not possible to obtain data about the criminal charges or the user status of defendants whose charges are reduced or dropped in the complaint room. Therefore the same 0.98 factor was applied to the charges facing addicts, users, and non-users, and the distribution of charges for the three groups was unchanged by this adjustment.

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*Felony Arrests: Their Prosecution and Disposition in New York City's Courts, A Vera Institute of Justice Monograph, The Vera Institute of Justice, New York, 1977.

4. Converting Individuals Arrested to Criminal Incidents

Up to this point, all calculations have involved individual defendants rather than criminal incidents. The number of individuals arrested does not necessarily correspond to crimes committed, because one person might be responsible for several crimes, or several arrests might result from one crime. The primary interest of this study is the number and proportion of criminal incidents attributable to narcotics users. Therefore, it was necessary to estimate the number of criminal incidents represented by the arrest figures obtained in step 3.

To obtain the number of incidents represented by our sample of arrests, it was necessary to determine the number of arrests that corresponds to one crime cleared (solved). Utilizing police department figures for the number of crimes cleared and number of arrests by crime category, the adjustment is derived by dividing total arrests by total crimes cleared for each type of felony. The number of arrests per crime cleared by user status was computed by weighting the adjustment ratios by the distribution of crimes that users, non-users and addicts were arrested for. Like all the other adjustments, this was done separately for each year from 1971 through 1975.

Typically, the number of arrests per crime cleared was close to one. When it was higher, in 1972, it was higher for users, non-users, and addicts alike.

5. Correction for Differences in Clearance Rates for Users and Non-Users

Further adjustment was required to translate the number of incidents represented by arrests (step 4) into estimates of crimes known to the police. It was necessary to carry out this adjustment for addicts, users, and non-users separately because clearance rates might vary between groups. This was done by dividing the number of incidents (step 4) by the respective clearance rate for each crime category.

This adjustment results in an estimate of the number of crimes known to the police which the sample represents. The non-user clearance rate was slightly higher than the rates for users and addicts, but the difference was not significant.

6. Users and Non-Users Who Commit Crimes on the Street

To obtain estimates of crimes actually committed on the street, the crimes known to the police (step 5) were adjusted (for addicts, users, and non-users separately) by the rates at which each type of felony is reported to the police in New York City.* This adjustment was necessary because users and non-users commit somewhat different kinds of crimes and there might have been a significant difference between the rates at which user and non-users crimes are reported to the police.

Typically, the rates at which user crimes were reported to the police were lower than the rates at which non-user crimes were reported because users (and addicts) tended to commit a slightly higher proportion of property crimes which tend to have relatively lower report rates.

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*Criminal Victimization Surveys in the Nation's Five Largest Cities, U.S. Department of Justice, Law Enforcement Assistance Administration, National Criminal Justice Information and Statistics Services, April 1975.

3

THE EFFECTS OF THE 1973 DRUG LAWS ON THE NEW YORK STATE COURTS

A Staff Working Paper
of the
Drug Law Evaluation Project

This paper was prepared by Anthony F. Japha
and Joseph P. Bauman, with the assistance of
Elizabeth Stanko and Richard McGahey.

August 1976

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The Effects of the 1973 Drug Laws on the New York State Courts

INTRODUCTION

Comprehensive revisions of New York State's drug laws became effective on September 1, 1973. The new statutes reclassified many drug crimes as high degree felonies, made prison sentences mandatory upon conviction for many drug crimes, restricted plea bargaining by defendants indicted for drug crimes, and reinstituted recidivist sentencing provisions in New York State. Under these latter provisions, prior felons newly indicted for a felony face new restrictions in plea bargaining, and prison terms must be imposed upon conviction.*

The Association of the Bar of the City of New York and the Drug Abuse Council, Inc. formed the Committee on New York Drug Law Evaluation late in 1973 to evaluate the effects of these revisions. The Committee's staff is addressing a variety of issues raised by the new provisions.

This is a Report of the staff and not of the Committee.

The degree to which the 1973 drug and sentencing laws can be judged successful will depend ultimately on their effects on street crime and drug abuse, effects which can occur in two ways. The laws might work to deter would-be drug abusers and other offenders by increasing the risks of committing crimes, an effect sometimes called "general deterrence." The laws could also be effective in reducing drug abuse and other crimes if they resulted in the imprisonment of offenders who would commit additional crimes if allowed to remain at large, a result known as the "incarceration" or "incapacitation" effect, or as "specific deterrence."

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*The recidivist sentencing provisions are referred to as "predicate felony" provisions in this Report.

Neither deterrence nor incarceration can be expected to operate automatically after a law is enacted. The new laws may or may not prove to be an effective deterrent, but deterrence is not likely to be enhanced unless the likelihood of punishment can be increased. Similarly, incarceration effects cannot be significant until substantial numbers of offenders are actually sentenced to prison.

This report assesses the success achieved by the courts in creating a credible deterrent over the two year period for which data are available. It is concerned primarily with implementation of the statutes dealing with drug offenses -- possession or sale of dangerous drugs. Many of the same issues are relevant to the predicate felony sentencing sections of the 1973 laws. However, sufficient information is not yet available to permit a thorough examination of those provisions.

It is important to stress that whatever the courts are able to do in carrying out the objectives of the laws, they can only provide a limited role in the complicated process of deterrence and incarceration. They cannot, for example, directly change the would-be drug abuser's perception of how likely he is to be arrested and go to prison, a factor which is crucial to establishing deterrence. To repeat, a final judgement on the effectiveness of these laws must await an evaluation of their effect on drug abuse and drug-related crime. Future reports of the Project will cover both these subjects.

The State's court system is dominated by the concentration of resources in New York City. The 117 criminal term judges operating within the City account for roughly 60% of the State's total superior court resources for criminal cases. The remaining judges are divided among 57 counties, with the heaviest concentrations in Nassau County, adjacent to New York City, and Erie County, which includes the city of Buffalo. The problems faced by judicial administrators in New York City are unique in the State, and a large part of this Report deals with the New York City situation.

Developments in six other counties are summarized to provide a range of experiences which together are probably representative of most court systems in the State.

The findings reported here are based on several sources of information. The Project staff conducted interviews with officials responsible for the administration of the criminal justice system in each county for which data were gathered. Discussions were held with the district attorney or the assistant district attorney responsible for the prosecution of drug cases, with administrative judges, with personnel in public defender offices, and with police officials.

SUMMARY OF FINDINGS

Implementation of the 1973 drug and sentencing laws would be judged successful if: (a) the risk of punishment facing offenders increased to make the deterrent potential of law more powerful; (b) the number of offenders sentenced to prison increased to remove potentially dangerous criminals from society; and (c) the speed with which cases are processed improved so that swiftness of punishment accompanies certainty of punishment.

During the first two years the new drug and sentencing laws were in effect, none of these key indicators of successful implementation have been evident: (a) the risk of punishment facing offenders did not increase noticeably; (b) the number of drug offenders sentenced to prison declined; and (c) the speed with which cases were processed did not improve. Both in 1974 and 1975, there were fewer dispositions, convictions, and prison sentences for drug offenses in New York State superior courts than there were in 1973. However, 1975 was in several respects a more "normal" year than 1974 -- particularly with respect to processing drug cases in New York City -- so that some of the implementation problems may finally have been overcome.

In spite of the slow pace of implementation, over 1000 offenders have been sentenced to indeterminate "lifetime" prison terms for drug felonies in the two years the laws have been in effect, so that a significant number of individual offenders have been affected by the new laws (see Table 2-I).

A total of roughly $55 million had been spent on court-related resources to implement the laws by the end of 1975.

Credibility of the Deterrent (Section 3)

Increasing the risk of punishment facing offenders

TABLE 2-I

Drug Cases in New York State Superior Courts Before and After Implementation of the 1973 Drug Laws

	1972	1973	1974	1975***
Indictments	7,528	5,969	6,208	5,340
Dispositions	6,991	5,580*	4,368	4,587
Convictions	6,033	4,739*	3,251	3,095
Prison Sentences	2,039	1,561*	1,074**	1,433
(As a percentage of Convictions)	33.8%	32.9%	33.0%	46.3%
Mandatory "Lifetime" Sentences	N.A.	0	315	817

N.A. = Not applicable

*Estimates by the Drug Law Evaluation Project.

**Of these, an estimated 529 came in new law cases, and 545 in old law cases.

***Full year estimated on the basis of data for the first nine months.

Source: New York State Division of Criminal Justice Services

depends on actions of the courts, on the effectiveness of the police, and on the willingness of the public to report crimes. This Report focuses primarily on the role of the courts. A discussion of police policies is contained in Section 5.

Mandatory prison sentences as prescribed in the 1973 drug laws can be imposed only after a conviction in a superior (felony) court. But only about one of every five arrests for drug felonies results in a conviction for a felony in superior court. The role of the courts in sentencing is limited to that small proportion of arrests. And the arrests themselves represent a small share of the drug crimes which are actually committed.

The contribution of the courts in creating a credible deterrent improved sharply in 1975 after having declined during 1974, the first year the new laws were in effect. During 1974, the likelihood of a prison sentence following conviction for a drug crime did not increase above old law levels because it took very long to process the most serious new law drug cases. Last year, however, nearly half the convicted drug offenders were sentenced to prison compared to a third in previous years. There were an estimated 1,433 prison sentences in 1975 compared to less than 1,100 in 1974.

But because it took so long to dispose of new law cases, there were still far fewer dispositions of drug cases in 1975 than in 1973, and the rise in the frequency of prison sentences in 1975 still left the total number of prison sentences below the number of sentences imposed in 1973, when an estimated 1,560 defendants went to prison following conviction on old law drug charges. The backlog of drug cases increased during 1975 despite a reduction in the number of new indictments.

The rise in the frequency of prison sentences in 1975 was not enough to make a significant difference in the risk of prison facing offenders committing drug crimes. That risk is still less than one chance in a hundred of receiving a prison sentence from a superior court.

Because of the absolute decline in the number of prison sentences in drug cases during 1974 and 1975 compared to 1973, any beneficial effects the laws might have in terms of crime prevention (through the incarceration of dangerous offenders) have probably not been realized. Sentences imposed on drug offenders have increased in severity. While in 1973 and 1974 old law cases, minimum sentences of over one year were rare -- they applied to between five and ten percent of the cases Statewide -- a third of the new law offenders in 1974 received sentences with minimums of over one year. These sentences are for indeterminate periods, and no reliable information is currently available regarding the length of time those sentenced to prison will actually serve.

Indications are that court systems outside New York City adjusted to the new laws after about one year, and that the New York City courts achieved a balance between indictments and dispositions about two years after the laws became effective. It is estimated that when the difficulties of implementing the new laws are fully overcome, the laws will be responsible for between 500 and 1,000 new prison sentences a year throughout the State.

The Speed of Justice (Section 4)

Outside New York City, the courts have generally been able to manage new law drug cases without an increase in the average time it takes to process a case. By contrast, there appears to have been a significant increase in court delays in New York City.

A recurrent theme in this Report involves the effect of class A felony drug cases upon the ability of a court system to cope with the new drug laws. Class A cases are those which face the greatest restrictions in plea bargaining. Most offenders convicted of class A felonies must be sentenced to prison for indeterminate periods ranging from one year to life. In addition, lifetime parole follows release from prison in all class A cases. The plea bargaining and sentencing restrictions increase the time required to process these cases.

In New York City, class A cases predominate, with 75% of the drug indictments falling into this serious category. Elsewhere in the State, class A cases account for only 25% of drug indictments. It is this difference which explains the relative ease with which counties outside New York City have managed the drug law workload.

Enforcement Policies (Section 5)

The 1973 drug laws recategorized drug offenses by lowering the quantity of drugs required to classify a crime as a serious felony. At the same time, penalties which could be imposed for drug felonies were also increased drastically Police might well have reacted to these changes by concentrating enforcement efforts on relatively low level drug crimes, crimes which had been given increased importance by the Legislature.

We have found no evidence of the reordering of police priorities in the counties we examined.

In New York City, where the possibility for street-level enforcement is greatest because of the large volume of highly visible drug traffic, the Police Department decided to maintain its policy of concentrating resources against "middle and upper" levels of the drug distribution system. The adverse effects that the new laws have had on the New York City courts, even in the absence of increased arrest activity, suggest that large numbers of additional arrests would have led to a crisis in the courts.

Two other aspects of enforcement have been examined. It is the consensus among the State's police officials and prosecutors that the new laws have helped them to develop informants in drug cases. Fears to the contrary had been expressed by some police officials when the laws were first proposed. Despite tough restrictions, there is apparently enough flexibility left in pleading and sentencing to induce some offenders to cooperate with law enforcement agencies.

Finally, an examination of indictment activity by prosecutors indicates no noticeable changes in the frequency with which indictments have been sought in drug cases. This possible loophole for avoiding post-indictment plea restrictions has apparently not been used.

However, a recent movement toward a lenient indictment policy for some drug cases by the Special Narcotics Prosecutor in New York City may change this result markedly.

The Effects of the New Laws on the New York City Courts* (Section 6)

New York City, which faces the greatest narcotics problem in the State, has had the most difficult time managing the new law caseload. Backlogs of new law cases have built up more quickly in New York City than elsewhere in the State. It was not until the last quarter of 1975 that the backlog stopped growing, and the size of the backlog was then equivalent to ten months worth of drug indictments.

Backlogs have grown this large in spite of the addition of 31 new judges assigned to deal with new law cases, furnished at an annual cost of $23 million.

The failure of the New York City courts to deal effectively with the new law drug cases can be traced to several factors. The great predominance of class A cases has caused a sustained increase in the demand for trials unmatched elsewhere in the State. Compared to 218 drug trials and a trial rate of 6.5% in drug cases in 1973, 13.5% of drug cases resulted in trials during 1975 (370 trials). Among class A cases, 19.5% resulted in trials during 1975.

Trials are extremely expensive to conduct. In New York City, it takes an average of six days or more of court time to dispose of a case by trial. Dispositions by plea are possible in a fraction of that time. The average non-trial disposition takes between half a day and four-fifths of a day to accomplish. Because trials are so costly in terms of court resources, it is vital that the scarce trial resources that are available be allocated to the most serious cases.

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*The superior criminal court in New York City is the Supreme court. Elsewhere in the State, it is usually the County Court, although in some instances it may also be the Supreme Court.

Even after allowing for the rise in drug trials, however, the new courts did not match the productivity -- measured in terms of the number of cases disposed of per working day -- of the existing City courts. If they had, the additional courts would have been nearly sufficient to avoid a buildup of the backlog. But because cases appeared on court calendars many more times before they were disposed of in the new courts compared to the existing court, even cases which did not ultimately result in a trial took significantly more court time than cases processed in the existing courts.

In addition to the increased demand for trials and lagging productivity, there were several hundred cases assigned to the new courts during 1974 which aggravated the pressure on those courts. The assignment of "potential predicate felony" cases to these courts -- cases in which a defendant had a prior felony arrest but not necessarily a prior felony conviction -- increased the workload of the new courts and contributed to the growth of the drug case backlog.

The Effects of the New Laws on the Superior Courts in Six Upstate Counties (Section 7)

In contrast to the New York City situation, the courts elsewhere in the State have been generally successful in managing new drug cases. The success is due in large measure to differences in the nature of the drug abuse problem, at least as it affects the criminal justice system.

Outside the City, nearly half the convictions for drug offenses involved marijuana in 1973. In 1974, partly because of a lag in processing class A cases upstate, marijuana accounted for nearly 60% of drug convictions in superior courts. (In the City, marijuana accounted for only 15% of convictions in both 1973 and 1974.) In 1973, only 35% of drug convictions upstate involved heroin or cocaine, compared to 75% of all City convictions.

Consequently, the prevalence of class A cases, most of which involve heroin (and to a smaller extent also cocaine), is much less upstate. While the class A cases in the City serve to increase the demand for trials substantially as described above, those pressures are not as great upstate.

The relative scarcity of class A cases has, in general, permitted the upstate counties to manage the new law drug workload without significant increases either in their backlogs or in the time it takes to dispose of a drug case.

A Cross-County Comparison of Court Resources (Section 8)

The fact that the City has done so much worse than other counties in coping with the new laws suggests that a higher proportion of the new resources could have been productively employed in the City.

On the other hand, when the total workload -- drug and non-drug cases -- facing the City courts is compared to the total workload in other counties, there is no indication that the City has been short-changed. This conclusion is based on a comparison of the volume of indictments adjusted for the size of the court system in each county. The finding holds even after differences have been accounted for between counties in trial rates and in misdemeanor dispositions taken in superior courts.

The great difficulties which the New York City courts have faced over the years is due in part to the sheer size and complexity of the City system -- there are currently 117 Supreme Court judges sitting in 20,000 criminal cases per year. Solution of these basic problems will require that the development and application of modern management techniques, which have been started and are supported by the administrative judge, be supported by the appropriation of suitable funds over a period of years.

3

THE CREDIBILITY OF THE DETERRENT

For laws to become effective deterrents, they must have an effect on the behavior of would-be offenders.

The discussion in this section deals with the potential deterrent power of the laws rather than the result of the behavioral process. Changes in potential deterrence are measured here as changes in the objective probability of punishment, that is the arithmetical ratio of prison sentences to crimes actually committed. The first part of this section presents estimates of the likelihood of a prison sentence (in superior court) following a felony arrest. A subsequent part of the section discusses the likelihood of punishment in terms of actual crimes on the street.

This section does not establish the odds as perceived by the individual criminal but the odds as measured by the aggregate experience of offenders in the judicial system. The effect on behavior will depend on the extent to which aggregate experience influences individual perception. It should be kept in mind throughout the following discussion that the objective of risk of imprisonment is not the same as the perceived risk and may or may not have an independent effect on criminal behavior.* Future work of the Project will attempt to gauge the perception of drug abuse toward risk of punishment.*

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*On all this see the comprehensive work by Franklin Zimring and Gordon J. Hawkins, Deterrence, The Legal Threat in Crime Control. The University of Chicago Press, 1973.

The Results**

Implementation of the 1973 drug laws had not resulted in a measurable increase in the likelihood of punishment for either drug or non-drug offenses by mid-1975. This result is not surprising because even if implementation had been more successful, the potential for increased deterrence may be small because the laws focus on the sentencing stage of the criminal justice process, and few crimes reach this very last stage in the adjudication process.

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*Even the connection between perceptions of risk and behavior is not direct. For a single individual, changes in perception do not necessarily imply changes in behavior. For a large group of individuals, changes in behavior are more likely to follow changes in perceptions. It is possible that perceptions of risk might change without any change in the objective likelihood of punishment. A successful advertising campaign may bring about this result.

**Several additional qualifications apply to this formulation. First, these remarks refer only to the "general deterrent" effects that might be expected to affect the population and would-be offenders. The "specific deterrent" effects, resulting from the incarceration of individual offenders, must be examined separately to determine how many crimes may be avoided by incarcerating offenders. Second, this discussion of the likelihood of punishment does not refer to the results of the deterrent process on the prevalence of drug abuse and crime. Rather, changes in the objective probability of punishment measure changes in one input to the deterrent process. Trends in drug abuse and non-drug crimes are being evaluated separately. Third, limitations in the available data restrict the measurement of the true probability of punishment to less-than-perfect approximations (see Appendix I for a description of the information gaps). The most serious piece of missing data is the frequency with which felony arrests lead to a prison sentence in a lower court. Rates of imprisonment in the lower courts may be affected by the new laws if pleas are induced in these courts because the defense doesn't want to risk longer prison terms which would result after conviction in a superior court. The fact that indictment rates in drug cases have not fallen recently suggests that this effect has not been substantial (see Section 5).

The likelihood that a defendant arrested for a drug or non-drug felony would ultimately be convicted and sentenced to prison in a superior court declined during 1974 after having increased between 1970 and 1973. There are indications that the likelihood of a prison sentence had increased again during 1975.

The finding that the risk of punishment (following a felony arrest) was not increased holds both in New York City and, generally, in upstate jurisdictions. Failure to increase the frequency of prison sentences in drug cases during 1974 can be traced to the lack of success in processing class A felony cases, the cases which are subject to the most stringent restrictions on plea bargaining and mandatory sentencing. These difficulties can, in turn, be attributed in large part to a rising demand for trials, which is discussed in Sections 6 and 7. As the following table shows, class A cases were completed in greater number in 1975, and contributed to the increase in the frequency of prison sentences.

Statewide Disposition of Class A Indictments

	All Class A Indictments	All Class A Dispositions	Number of Prison Sentences
1974	3,007	620	325
1975*	2,934	1,694	859

*Full year estimated on the basis of data for first nine months.

Source: Felony Processing Report, New York State Division of Criminal Justice Services.

In New York City, where there are a great many class A cases, these cases contributed most to the buildup in the backlog of drug cases in the Supreme Court. Upstate, where there are relatively few class A cases, the few that do occur are not sufficient to significantly raise the overall rate at which offenders are sent to prison. But, even upstate, the disposition of class A cases lagged behind the disposition of other drug cases in the superior courts.

Estimates of the Likelihood of Punishment*

The likelihood that a defendant arrested for a drug felony would ultimately be sentenced to prison in the superior courts varies between jurisdictions, but most counties experienced increases over the 1970-1973 period (see Table 3-I).

Among the larger jurisdictions (New York City and Erie, Monroe, and Nassau counties), the likelihood of receiving a prison sentence varied widely, between two percent and 16%, but patterns within jurisdictions were fairly clear. Erie County has consistently had the lowest

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*The probability of punishment cited here is calculated as the composite of three intermediate probabilities: (1) the likelihood of indictment following a felony arrest; (2) the likelihood of conviction following indictment (conviction to either a felony or a misdemeanor); and (3) the likelihood that a prison sentence will be imposed following conviction (for either a misdemeanor or a felony). These intermediate probabilities were examined to determine how frequently they contributed to changes in the probability of punishment. Each of the three intermediate probabilities contributed to changes in the probability of punishment in about the same number of cases so that in general no one of them was more important than any other.

TABLE 3-I

Ratio of Prison Sentences to Arrests: The Likelihood of Receiving a Prison Sentence in Superior Court After a Felony Drug Arrest

COUNTY	1970	1971	1972	1973	1974	Jan.-June 1975
ALBANY	0.7%	3.1%	4.7%	4.4%	8.0%	N.A.
BROOME	0	4.0	8.9	16.7	7.1	7.9%
DUTCHESS	1.1	5.9	16.9	8.2	5.3	18.1
ERIE	3.8	2.2	2.0	2.6	3.1	N.A.
MONROE	8.7	10.6	5.5	6.4	6.4	N.A.
NASSAU	8.3	16.0	14.4	10.1	6.1	12.0
NEW YORK CITY	8.6	7.6	12.4	12.9	9.6	12.5

TABLE 3-II

Ratio of Prison Sentences to Arrests: The Likelihood of Receiving a Prison Sentence in Superior Court After a Non-Drug Felony Arrest

COUNTY	1970	1971	1972	1973	1974	Jan.-June 1975
ALBANY	4.7%	5.6%	7.4%	11.1%	8.0%	N.A.
BROOME	7.6	10.4	11.5	16.1	14.3	20.9%
DUTCHESS	7.7	7.3	11.7	13.2	9.6	12.5
ERIE	7.1	5.7	6.4	9.4	8.3	N.A.
MONROE	12.8	11.3	11.6	10.3	11.2	N.A.
NASSAU	11.3	12.0	18.4	23.0	16.6	20.0
NEW YORK CITY	8.3	6.9	8.4	9.3	7.7	9.9

N.A. = Not available

Source: New York State Division of
Criminal Justice Services

probability of punishment (between two and four percent); Monroe County is generally in the middle with prison probabilities of between six and eleven percent; Nassau County and New York City exhibit generally higher probabilities of punishment. The three counties in our study with the smallest populations (Albany, Broome, and Dutchess) had too few felony drug arrests to establish a pattern. Many of the extremes in the probability of punishment occurred in these three counties.

Several officials from non-New York City areas remarked to us that they felt the 1973 drug laws were aimed at curbing the lenient judicial policies thought to be prevalent in New York City. Our results show that for drug felony arrests, the likelihood of prison sentence is just as great in New York City as in the other jurisdictions. In 1974, New York City's likelihood of punishment was higher than in any of the other six jurisdictions. In no year for which we have data did New York City rank below third in the likelihood of prison sentence for drug offenses.

Four of the seven jurisdictions (including New York City) showed decreases in the probability of punishment for a drug felony during 1974; in a fifth (Monroe County) there was no change; and two counties (Albany and Erie) experienced increases (See Table 3-I). All four of the jurisdictions for which we have data covering the first half of 1975 showed increases above 1974 in the likelihood of a prison sentence after a felony drug arrest. It now appears that 1974 was a year of transition to the new laws, with a major interruption in the flow of cases traceable to difficulties in processing class A cases. A return to more normal patterns of disposition and sentencing was evident in 1975.

Between 1970 and 1973 there was a definite trend toward an increase in the probability of punishment for non-drug felonies. Only Monroe County did not exhibit this upward trend, and there the risk of a prison sentence was virtually constant (see Table 3-II).

Since 1970, Nassau County has shown the highest probability of punishment for non-drug felonies.* Broome County had the steadiest increase in the probability of punishment with increases from 8% in 1970 to 21% in the first half of 1975.

New York City's ranking has not been as high for non-drug offenses as it has been for drug crimes, with the likelihood of punishment falling generally in the lower tier among the counties. In contrast to its high ranking during 1974 for drug crimes, the probability of a prison term following a non-drug arrest in New York City was the lowest of any of the seven jurisdictions (about eight percent), but only imperceptibly lower than in Albany and Erie counties. Albany and Erie counties showed lower probabilities than New York City between 1970 and 1972, but caught up with the City's rate of punishment in both 1973 and 1974.

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*But Nassau also had a high proportion of misdemeanor convictions in superior court. See "A Cross-County Comparison of Court Resources," below.

In New York City since 1970, drug offenders received prison sentences more frequently than non-drug offenders. Just the opposite is true in each of the six counties outside the City. We can speculate that the contrast is due to the relatively serious nature of drug offenses which come to the attention of the courts in the City, i.e. offenses involving heroin where the likelihood of non-drug criminal activity of the defendant is thought to be high.

Six of the seven jurisdictions experienced a break in the upward trend toward imprisonment in 1974, as the likelihood of punishment for non-drug felonies declined (Monroe County was again stable). However, all four jurisdictions for which data are available for the first half of 1975 (New York City and three other counties) experienced a resumption of the earlier trend, with the City and Broome County reaching new highs.

Each of the upturns in the first half of 1975 was accompanied by increases in the frequency with which convicted defendants were sentenced to prison.

The Potential in the New Laws for Raising the Risk to Offenders is Limited

Even if the new laws could have been implemented quickly without delays and higher backlogs (both of these trends are documented in following sections), the chance of increasing the deterrent power already present in existing law would be limited because of the very small risk presently facing those engaged in crime.

In contrast to the estimates of punishment probabilities cited above, which use felony arrests as a base, the discussion in this sub-section deals with the likelihood of punishment following an actual

Typically, the number of offenders convicted (either by trial or plea) in superior courts account for only 15-20% of defendants arrests for felonies. The reduction occurs because most arrests do not result in indictments, and a significant proportion of those that do lead to indictments result in acquittals or dismissals (see Chart 3-A).

Compound this dilution in the courts with the facts that (1) only 20% of all complaints to the police lead to an arrest (a typical arrest rate both in New York City and elsewhere in the county), and that (2) citizens only report half the crimes (with victims) that really occur,* and it is striking what a small number of felonies eventually lead to a conviction in superior court.** The final tally

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*U.S. Department of Justice, Law Enforcement Assistance Administration, Criminal Victimization Surveys in the Nation's Five Largest Cities. (Washington,D.C.: 1975),pp. 61,62.

**These figures are for non-drug felonies in New York City, where data exists for complaints and for criminal victimizations. The values might vary from place to place, but probably not enough to change the conclusion that the risk facing an offender is low.

Chart 3-A

The Gradual Reduction in the Risk of Imprisonment

Non-Drug Felonies

All non-drug felonies	100%										
	x										
Felonies reported to the police	50%	=	50%								
			x								
Arrests for known felonies			20%	=	10%						
					x						
Indictments following arrest					25%	=	2.5%				
							x				
Convictions in superior court							60%	=	1.5%		
									x		
Prison sentences after conviction									60%	=	0.9%

Drug Felonies

All drug felonies	100%										
	x										
Felonies reported to the police	1%	=	1%								
			x								
Arrests for known drug felonies			40%	=	0.4%						
					x						
Indictments following arrest					35%	=	0.14%				
							x				
Convictions in superior court							60%	=	0.08%		
									x		
Prison sentences after conviction									60%	=	0.05%

Source: Estimates by the Drug Law Evaluation Project based on 1975 data for New York City.

comes to 1.5-2% of non-drug felonies actually committed. (Some felony arrests lead to a prison term in a lower court after the charge has been reduced to a misdemeanor, i.e. prior to indictment. We estimate that these prison sentences add roughly 0.5% to the 1.5-2% range cited here.) A comparable figure for drug felonies would be much lower because so few drug crimes are reported to the police. Use of official statistics on complaints to the police of drug offenses would severely understate the true prevalence of drug crimes.* Laws dealing with mandatory sentencing in the superior courts can only operate on this two percent of crimes.

Nothing in this study addresses the question of the deterrent effect of the old drug law, or, for that matter, of any other section of the Penal Law which did not change. A very low risk of punishment may be sufficient to deter most would-be offenders. The question at issue is whether the change in risk is effective in deterring additional would-be offenders.

Changes in the risk of engaging in crime depend on changes in what is now a two percent likelihood of being sent to prison as a result of committing a crime.

Approximately one-third of those convicted in the superior courts of the State in 1972, 1973 and 1974 were sentenced to prison under the old drug laws. These prison terms represent far less than one percent of drug crimes which are actually committed.

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* A subsequent report of the Project will examine changes in the prevalence of heroin abuse, which with some caution, can be used as a proxy for movements in the most serious drug crimes.

Eliminating all discretion from the sentencing process, and imposing prison terms after every conviction, would change the cost of conviction substantially (from less than a 50% chance of prison to 100%), but the risk involved in committing a crime would only be changed from the one percent it is today to two percent.

We project that when backlogs have stabilized, i.e. when class A dispositions occur with the same regularity as class A indictments, approximately 60% of all superior court drug convictions will result in prison terms. Under the old laws, roughly a third of convictions resulted in prison sentences. (The Project's survey of sentences showed that because class A cases lagged during 1974, the rate of prison sentences did not increase during the first year the new laws were in effect.)

Once stability has been achieved, we expect the new drug provisions to have resulted in an increase in the likelihood of punishment (the ratio of prison sentences to crimes actually committed) of one percent or less.

It is possible that even this small change in risk will have some effect on deterrence. For example, the change in risk might be perceived as large because it is concentrated at one point in the judicial process, i.e. after conviction. The odds of punishment facing the relatively few who get that far through the system have gone up substantially. On the other hand, conviction is the point in the process furthest removed from commission of the crime. From this point of view, a given increase in the risk of punishment might be most effective if concentrated at the arrest stage rather than the conviction stage.

Several police officials, both within and outside New York City, informed us that they noted a retrenchment of street level drug dealing just before and soon after the new laws became effective. The officials attributed this caution to uncertainty among dealers over the police response to the laws. These same officials believe that the retrenchment was only temporary. When dealers noticed no change in police behavior, they say, business picked up once again, although it is felt that, in general, more caution is exercised in street level dealing than before the new laws became effective. (The data presented in Chart 5-A, which shows a uniform downturn in arrests during 1973, are consistent with this view. See Section 5.)

We do not have enough information yet to project the comparable change in the probability of punishment for non-drug crimes. Some increase is expected to result from implementation of the predicate felony provisions, but it is not likely to be greater than the change we expect to see for drug offenses.

To repeat, these conclusions refer only to the potential in the laws for general deterrence, and not for crime prevention as a result of incarceration. If their potential as an enhanced deterrent is as limited as suggested here, the benefits they can have as crime control measures must depend on incarceration effects.*

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*Late in 1975, staff of the Drug Law Evaluation Project conducted a survey of convictions and sentences in 1974 new law drug cases. Results regarding prior criminal history and age of defendants were compared to offenders convicted and sentenced under the old drug laws in 1972 and 1973. The results of the survey are fully described in _Convictions and Sentences Under the 1973 New York State Drug and Sentencing Laws: Drug Offenses_, A Staff memorandum of the Drug Law Evaluation Project, December, 1975.

Potential Number of New Prison Sentences

The defendants in cases which reach the sentencing stage account for a greater (though unknown) proportion of the crimes actually committed than the two percent figure discussed above suggests. Thus a policy of incarceration should have a somewhat greater effect on crime on the streets.

The two percent risk of imprisonment may be thought of as the potential cost facing a would-be offender in committing a single crime. For an offender who commits many crimes, the two percent figure is the risk he faces in committing his next crime. However, if he were to commit ten crimes he would face a two percent risk of imprisonment for each crime, and his risk of imprisonment is much higher than the objective odds facing one-time offenders.

The relatively high risk of imprisonment for multiple offenders is the basis for the contention that many recidivists eventually find themselves before the bench. A policy of imprisonment, then, has potentially significant effects on the incidence of crime on the streets simply because recidivists are isolated from society.

The extent of the effects of incarceration depends on the frequency of crimes commited by criminals and the length of the criminal "career" in addition to the likelihood of punishment.* These factors are being explored by Project staff.

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*See, for example, Shlomo Shinnar and Reuel Shinnar "The Effects of the Criminal Justice System on the Control of Crime: A Quantitative Approach," in Law and Society, Summer, 1975.

It is clear, though, that in the absence of reliable predictions of future behavior by offenders, there will be no increase in the effectiveness of prison as a preventer of crime unless there is an increase in the number of offenders in prison (or a rise in the length of time offenders spend in prison).

We estimate that even with full implementation -- once there are proportionately as many dispositions of class A cases as there are indictments -- the number of newly imposed prison sentences will be surprisingly small. Based on the frequency of prison sentences in 1974 and 1975, and on the distribution of cases between class A felonies and other drug cases, it is likely that only 600 new drug felony offenders a year will face prison sentences as a result of the new laws, once full implementation has been achieved.

This estimate is based on the projection that 60 of every 100 drug convictions will eventually result in a prison term.* (In 1974, the comparable figure was 33% and in 1975 it was 46%.) In New York City, because of a much higher proportion of class A cases, the prison rate is likely to reach 75% of all drug convictions.

Table 3-III summarizes recent history and presents three alternate projections for the future.

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*Statewide in 1974 and 1975, roughly 50% of drug indictments were for class A felonies. Fully 90% of convictions for class A felonies resulted in a prison sentence. Only 20% of non-class A convictions resulted in prison terms. Therefore (.5)(.9) + (.5)(.2) = .55. The table in the text conservatively rounds upward to .60.

Table 3-III

Number of Prison Sentences Likely to Result from Full Implementation of the 1973 Drug Laws

YEAR	Superior Court Drug Convictions		Frequency of Prison Sentence After Conviction		Number of Prison Sentences	
	N.Y.S.	N.Y.C.	N.Y.S.	N.Y.C.	N.Y.S	N.Y.C.
1973	4,739	2,703	32.9%	41.4%	1,561	1,118
1974	3,251	1,673	33.0%	45.6%	1,074	762
1975	3,095	1,652	46.3%	59.0%	1,433	974
Future I	3,000	1,500	60.0%	75.0%	1,800	1,125
Future II	3,500	1,750	60.0%	75.0%	2,100	1,312
Future III	4,000	2,000	60.0%	75.0%	2,400	1,500

Sources: New York State Division of Criminal Justice Services; and estimates by the Drug Law Evaluation Project.

Recently, statewide drug indictments have been running between 5,000 and 6,000 per year, and convictions between 3,000 and 5,000 per year. In New York City, drug indictments have been about 3,000 a year for the last three years, and they have led to between 1,500 and 2,000 convictions. The larger number of convictions in 1973 is the result of cases which originated under the City's mass arrest policy and which were still being disposed of.

If we assume that recent indictment and conviction rates will prevail in the near future, and that the frequency of prison sentences rises to expected levels (60% of convictions across the State and 75% of convictions in New York City), between 1,800 and 2,400 prison terms will result from drug convictions statewide. Taking the midpoint (Future II in Table 3-III) as the most likely estimate, the 2,100 prison sentences in statewide drug cases represents an increase of only 600 sentences above the 1,561 sentences under the old laws in 1973.

Direct costs of the new courts and associated personnel furnished to implement the 1973 laws are currently running at $40 million a year. Since mid-1975 those courts have handled both new law and other cases*, and their value must be put in terms broader than the number of prison sentences they produce.

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*See Section 6.

But as a crude qauge of their value, assume their existence results in another 400 prison sentences a year statewide, above the 600 new sentences they might produce in drug cases. The $40 million expenditure* would then result in 1,000 new prison sentences (which would not have occurred under the old laws), or an extraordinary cost of $40,000 for each new prison sentence. To the extent that offenders are likely to be responsible for numerous crimes, the cost per crime avoided or postponed by incarceration is reduced. The higher the recidivism rate, and the more crimes committed by offenders, the greater are the benefits of incarceration, for a given cost.

This reference to the cost of additional prison sentences is not meant to imply that prison sentences are the only product of the courts. If the new courts furnished to implement the 1973 laws also produced dispositions in non-new law cases which would not have been produced in their absence, they would be contributing to a reduction in the overall backlog of the courts, and generate another benefit to be weighed against the costs of implementation. The courts furnished to deal with the new laws do produce some dispositions in non-new law cases. However, the 1973 laws are not in themselves expected to have an impact on total dispositions while they were intended to result in additional prison terms.

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*The estimate is crude because the $40 million includes the cost of that portion of the newly furnished resources which are devoted to non-new law cases.

4

SPEED OF JUSTICE

The speed with which indictments are processed is an issue of central importance in evaluating the impact of the new drug laws on the administration of justice. Changes in the age of cases in the criminal justice system serve as one measurement of the ability of the courts to efficiently handle the change in workload caused by new law cases. In addition, while there is no empirical evidence we know of that correlates the speed of disposition with effective and credible deterrence, that relationship is intuitively attractive and is often mentioned in the literature.*

Although the present data are not conclusive, they do suggest that the length of time required to process a drug indictment in upstate counties has not been seriously affected by the new drug and sentencing laws. However, drug cases in New York City do seem to be facing considerably longer delays than was the rule prior to the implementation of the new laws. These judgments are based on an analysis of the change in backlog in the superior courts of the State, and the length of time between indictment and disposition for cases which were actually disposed of.*

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*See, for example, Herbert L. Packer, The Limits of the Criminal Sanction. Stanford University Press, 1973, p. 159; and The President's Commission on Law Enforcement and Administration of Justice, Task Force on the Administration of Justice, Task Force Report: The Courts. U.S. Government Printing Office, 1967, pp. 80-91.

The New York City Supreme Courts experienced a steady increase in the backlog of new law drug indictments from the time the laws were passed through the fall of 1975. By the end of December, 1975, 2,500 new law drug cases were pending in the New York City Supreme Courts. This backlog amounted to the equivalent of ten months worth of drug indictments.

An increase in the backlog would not in itself be a cause for alarm if resources could be expanded enough to hold delays constant. For example, if the pending caseload rose by 1,000 cases, but new court personnel were available to process those cases in a reasonable amount of time, the delay between indictment and disposition might not change at all.

There is no indication, however, that the additional resources furnished in New York City were sufficient to avoid a rise in court delays. During the first two years under the new drug laws, the time it took to dispose of new law drug cases increased steadily, from an average of roughly six months in the third quarter of 1974 to eight months in the third quarter of 1975.

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*The length of time that disposed cases had been pending in the superior courts does not give a true indication of the actual court delay. For example, if only cases that are easy to process are disposed of, the time to disposition for those cases might be quite low. However, the age of the cases awaiting disposition might be going up at the same time. In order to judge the true direction of changes in the speed of justice, we would need to know the age of pending cases as well as of disposed cases. Unfortunately, only data on the latter are available.

The combination of increasing backlogs and increasing age of cases which did complete the process is evidence that the age of the pending caseload had increased as well in New York City. No accurate estimate can be made of the extent of the increase, but an increase of about 45 days in the median age of the pending caseload would not be inconsistent with the available data.*

In upstate counties, there was an unavoidable increase in the pending new law drug caseload during 1974. There is always some minimum time required to process a case, and as there were virtually no new law cases pending before 1974, some growth of the pending caseload was inevitable. However, in contrast to the New York City experience, the backlog of new law indictments upstate stabilized during 1975. In these counties, the median time to disposition is between 90 and 120 days compared to the City's 240 days, and has not changed since the last quarter of 1974. It appears, therefore, that upstate areas have been able to stabilize the disposition process for drug cases at half the time it takes to dispose of new law cases in the City. The stability in both the size of the backlog and in the time it has taken to process cases in the past implies that there has also been stability in the age of the pending caseload.

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* The calculation assumes a first-in,first-out processing system and an even flow of indictments. In 1973, the median age of disposed cases was 150 days, from which we assume that the median age of pending cases was 75 days. Corresponding figures for the first three quarters of 1975 were 245 days for disposed cases, and 122 days for pending cases. The difference is 122 minus 75, or 47 days.

We think that a large part of the increase in court delays in the City can be attributed to the plea bargaining and sentencing restrictions imposed by the new drug laws. The causality is somewhat ambiguous because there is no pre-law non-drug information available to compare to non-drug data for 1974 and 1975. Without such information, we do not know for certain that the rise in drug case delays are not matched by greater delays in non-drug cases.

The best evidence for attributing the rising delays to new drug cases is that it is the prevalence of class A felony cases which seems to make the difference between success and failure in coping with the new laws. The high proportion of class A felony indictments pending in New York City is evidence that class A cases have been much more difficult to process than other drug cases. Class A cases comprise over 90% of the pending new law caseload in New York City, a higher percentage than their share of indictments (75%).

Latest available data show that half the class A felonies are over eight months old at time of disposition, but other new law drug cases are only about five months old. Since the backlog of drug cases in New York City is dominated by A felonies and these cases have already been awaiting disposition longer than other cases, the processing time of the new drug cases is likely to increase for some time to come.

The relative speed with which new law cases are processed in upstate counties is partly attributable to a lower percentage of class A felonies than is evident in the City. As the data for the City indicated, disposition data for upstate show that class A felonies tend to have been in the courts about two months longer than less serious drug indictments. However, both class A felonies and other new drug cases appear to be processed more quickly in upstate counties, with times to disposition running between two and three months less than in the City. Unless there is an increase in the frequency of class A cases outside the City, processing times should remain in the three to four month range.

5

ENFORCEMENT POLICIES

The reclassification of most narcotic drug crimes to high degree felonies gave police departments across the State the opportunity to reassess their drug enforcement policies. From the point of view of imposing punishment on drug offenders, the new laws were potentially significant. In particular, successful prosecution of narcotic drug felonies promised a high likelihood of a prison sentence for the offender. The reclassification of low level narcotic offenses into a class which contains the State's most serious crimes (the class A felony) suggests that the Governor and Legislature regarded these offenses with special concern, and that they expected police officials to make control of these crimes a high priority.

However, our discussions with law enforcement officials throughout New York State have failed to identify policy changes that took place in response to the new drug laws. The only explicit decisions were to maintain the enforcement strategies in effect prior to the passage of the laws.

New York City

In 1968, the New York City Police Department implemented a policy very similar to the one implied by the new drug laws. Large numbers of low level drug arrests were encouraged, and the number of felony drug arrests increased more than three-fold, from 7,199 in 1967 to

26,799 in 1970. About three quarters of the arrests involved heroin.

After two years of very high numbers of arrests-- drug felonies accounted for 29% of the City's felony arrests in 1970 compared to 12% in 1968-- a re-evaluation of drug enforcement policy was undertaken by Police Commissioner Patrick Murphy. The re-evaluation concluded that only a small proportion of arrests resulted in a prison sentence, and that the harassment value of the arrests was not great enough to have a visible effect on the size of the drug market. In early 1971, explicit revisions to enforcement policy were made, changing the emphasis from large numbers of low level arrests to "quality" arrests, i.e. arrests which, it was hoped, would lead to the prosecution of largescale drug dealers. Significant, too, was the centralization of drug enforcement in a citywide Narcotics Division. In the three years following adoption of this new policy, drug arrests declined to a level equal to the one observed in 1968. Almost all of the decline can be accounted for by a decrease in heroin arrests.

The emphasis on drug distribution, rather than on street-level activity, was still in effect when the new drug laws were enacted. According to Donald Cawley, Police Commissioner at the time that the new laws became effective, a decision was made not to change the established enforcement strategies. The roughly equal division of enforcement resources between low, middle and high levels of the market, which was a rule of thumb under the Murphy policy, was to be maintained.

This decision was based on two overriding concerns. First, the belief remained that the arrest of large numbers of low level violators could not have any real impact on drug trafficking, even if those now arrested faced long prison terms. Second, it was feared that increasing the number of drug arrests under the new laws would create intolerable delays in processing cases in the courts.

The reluctance of the New York City Police Department to return to a policy of sweeping the streets of low level narcotics violators is evident from arrest statistics. During 1974, there was virtually no change in the number of individuals arrested for felony drug crimes beyond the 1973 level. It is widely recognized by Departmental personnel that, in terms of raw numbers, the arrest activity could be increased substantially at any time.

Similarly, the proportion of drug felony arrests involving heroin remained constant at about half of all drug arrests, indicating that enforcement activity did not change from other drug activity to narcotic crimes. In addition, the proportion of class A felony arrests accounted for by low level sales of narcotics (class A-III felonies) has not increased since implementation of the laws. An increase in this proportion would have indicated a possible movement toward lower level narcotic arrests.

In retrospect, it appears that the Department's judgement, at least as far as the courts are concerned, was correct. The analysis in Section 6 suggests that largescale arrests of street level drug abusers would undoubtedly have led to even more delays than have already been experienced. On the other hand, the value of street level enforcement on an intensive scale is still an open question. One argument against upper level narcotics enforcement is that if it is successful in reducing the supply of drugs, the price of drugs will increase. If there is a direct causal relationship between price and crime -- the addict who must have his fix no matter what the price -- then street crime will rise as a result, as the addict plunders to raise more cash. The other side of the same argument is equally valid but seldom heard: if a direct relationship between price of drugs and crime is observed, then one way to lower price is to reduce demand by removing many users from the market through street level enforcement. Of course, these arguments are simplifications. No credible argument can be made that the demand for drugs is totally inelastic, nor are the choices between "high" and "low" level enforcement very clear. Research currently underway by others into the elasticity of demand for heroin should eventually provide some clues to the likely outcome of narcotic enforcement policies on non-drug crime.*

One powerful argument for street level enforcement should not be overlooked. Failure of the police to respond to obvious street level drug dealing -- and it is obvious and widespread in Harlem, for example -- may lead to high levels of cynicism about the police within the affected community, where police relations are already tenuous.**

But effective street-level enforcement of the drug laws is extremely expensive. In New York City, several police precincts operate narcotics squads, made up of a group of uniformed officers, to observe street-level drug activity and to make arrests which will stand up in court. That is, the evidence against the buyer and seller of drugs must be obtained in a legal manner and should stand up to the scrutiny of the court. Typically, a narcotics squad operates with four men at a time, including a sergeant or other officer.

Because of the care taken in obtaining evidence (for example by photographing the exchange of drugs for cash), it might take a four man squad as long as a full tour of duty to make one or two street level arrests. That amounts to nearly a full man-week of effort, and this despite the ease of finding an open, active drug market.

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*Levine, Daniel; Silverman, Lester; Spruill, Nancy. Urban Crime and Heroin Availability. Public Research Institute Report PRI75-1. April 1975.

**James Q. Wilson presents another sensible argument in Thinking About Crime, Basic Book, Inc., N.Y., 1975, p. 148. Wilson points out that high level dealers are easily replaced in a distribution organization.

Additionally, officers spend a great deal of time in court. In the Central Harlem Precinct, which produces more drug arrests than any other precinct in the City, the officers assigned to the narcotics squad spent more man-days in court during a four month period in mid-1974 than they spent on patrol.

A judgement on whether or not such a commitment of resources to street-level enforcement is justified is well beyond the scope of this Project. An assessment of that kind would have to be based on an evaluation of the alternative uses of police resources, and would lead quickly into an examination of crime control strategies in general. But the extreme cost of drug law enforcement is often not realized, and only when the full costs are considered can reasonable decisions be made on the allocation of enforcement to narcotics crime.

A widespread concern within the Department with avoiding police corruption may also have been a factor inhibiting an aggresive return to low level narcotics enforcement. Drug law enforcement is known as one of the seedier police activities, and one which has often been associated with extensive corruption. According to one report, more than half of the 90 detectives assigned to the now disbanded Special Investigations Unit have been indicted by Federal or State grand juries.*

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*New York Times, September 18, 1975.

Outside the Narcotics Division, narcotics law enforcement appears to be an undesirable assignment for police officers. Even in precincts where drug crimes are a very serious problem, the narcotics squads described above are operated only when a superior officer is available to accompany the other members of the squad in a supervisory capacity. If a sergeant or other officer is not available on a given date, the squad members don't patrol that day. Narcotics arrests by uniformed officers not assigned specifically to narcotics squads are discouraged. Even members of the precinct anti-crime teams, plainclothes officers who work as decoys to catch perpetrators, are strongly discouraged from making narcotics arrests. The anti-crime squads are the most productive on the force as far as felony arrests and convictions are concerned. In 1975, precinct anti-crime squads comprised only five percent of the patrol force, but were responsible for 14% of the felony arrests in the City. Members of the anti-crime squads, however, are forbidden to make narcotics arrests in the absence of a superior officer for fear that they will be accused of corruption.

Thus there were three factors, largely ignored at the time the laws were enacted, which operated against changes in drug enforcement patterns by the New York City Police Department. They were: 1) the 1969-70 experience with very large numbers of arrests, which the department found did not produce an adequate number of convictions and sentences; 2) the very high cost in terms of manpower of enforcing the drug laws at the street level; and 3) the undesirability of involvement by the police officers themselves in narcotics law enforcement.

Whatever the optimum mix of enforcement activities might be, the Department's emphasis on middle and upper level traffickers has led to many arrests of offenders involved at levels of the drug market above the street level. Buys made by undercover agents generally increased in value during 1974, with about ten percent of the heroin buys involving one ounce or more. Each of these operations resulted in an arrest for a class A-I felony. These investigations have also led to many indictments. More than half the class A felony drug arrests and indictments are for class A-I and A-II offenses. There have been as many indictments for A-I crimes as there have been for A-III crimes (the lowest class which carries mandatory "lifetime" sentences). Most of the defendants indicted for class A-I and A-II offenses, however, have been allowed to plead to lower charges within the class A category and have not, as a group, been more likely to receive long sentences than defendants indicted on class A-III charges.*

Narcotics prosecutors in the Bronx, Brooklyn, and Manhattan all stressed that when lower level pleas are allowed to class A-I and A-II indictments, they would insist upon sentences longer than the minimum. The data does not support this contention.

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*See page 54, second paragraph.

Judge Michael Dontzin, who recently assumed responsibility for the administration of the Manhattan drug courts, was not surprised at the high proportion of short minimum sentences in these cases. He feels it is attributable in large measure to the low quality of the A-I cases. That is, prosecutors who are reluctant to bring an A-I case to trial because of a high risk of acquittal will often accept a lower plea even with a low minimum sentence. A second factor accounting for the low minimum sentences in some cases is that the offender has provided useful information to the prosecutor in return for a recommendation of a light sentence.

Counties Outside New York City

Large-scale increases in enforcement effort at the street level outside New York City were unlikely to occur. There are no open drug markets in upstate counties similar to those thriving in several New York City communities. Police officials have pointed to the closed nature of the hard drug market, and the need to infiltrate these markets with undercover agents if enforcement is to be successful.

In addition, the nature of the drug problem is entirely different in areas where heroin markets are not widespread. In most counties, more than half the felony drug arrests involve marijuana, penalties for which were not changed by the 1973 laws. Arrests for abuse of other drugs are rare, and normally result from complaints received by the police. Very few of these arrests are in the class A category.

It is not surprising, then, that there was no notable reallocation of police resources within drug enforcement activities. Neither have we discovered any increase in personnel assigned to drug enforcement, either in local police departments or by the State Police.

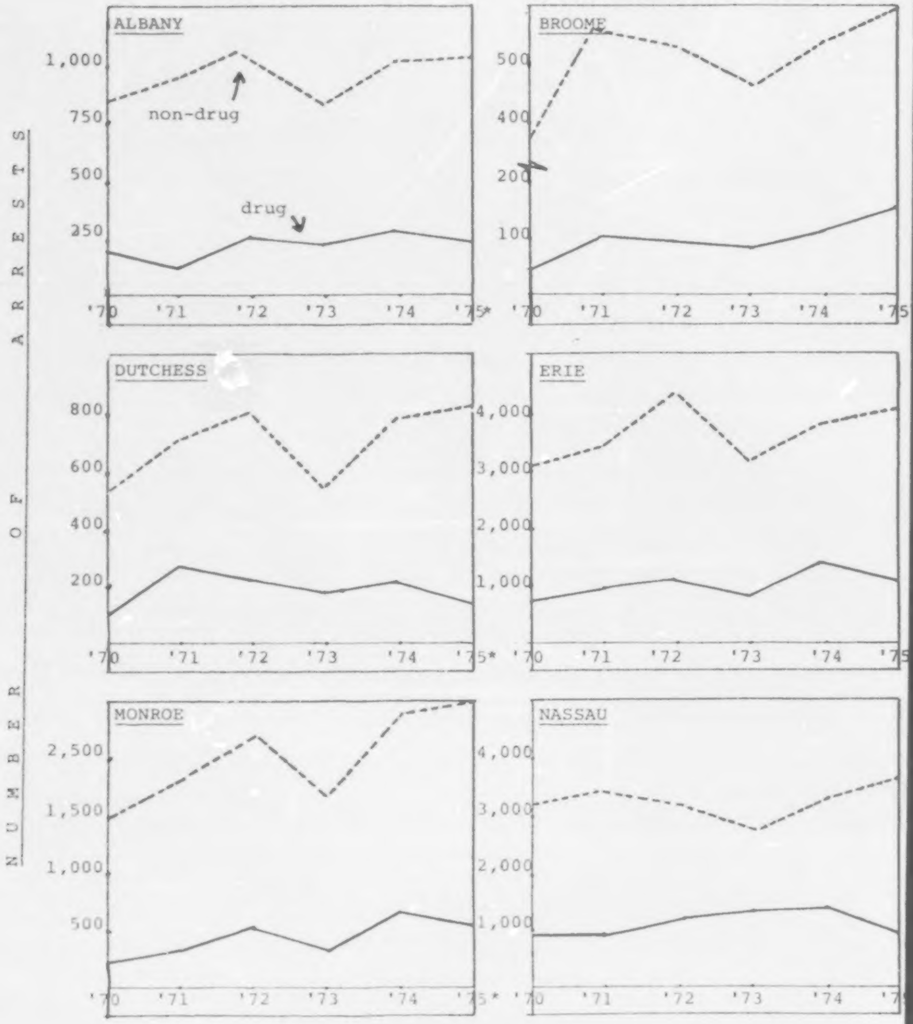
The absence of policy changes did not prevent 1974 from becoming a year of widespread increases in the number of felony drug arrests. Chart 5-A exhibits both drug and non-drug arrest data for the six upstate counties examined in this Report. Year-to-year changes are surprisingly similar between counties. Five of the six counties saw declines in drug arrests during 1973, and all six showed increased activities in drug arrests during 1974.

Note that patterns of non-drug arrests were much the same as the pattern for drug arrests. All six counties saw reductions in non-drug arrests during 1973, and increases during 1974. Last year, non-drug arrests continued to rise in all six counties, while drug arrests fell in five of the six.

Such similarity in changes from year to year suggest some common causality. If one exists, we do not yet know what it is. The possibility that patterns of drug arrests are good indicators of actual drug abuse will be examined

Chart 5-A

Drug and Non-Drug Adult Felony Arrests



*Full year estimated on the basis of partial data.

Source: New York State Division of Criminal Justice Servic as part of the Project's analysis of recent trends in drug abuse.

One effect that the high level of 1974 arrest activity did have was to increase the number of drug indictments in the superior courts. These changes are described in Section 7.

Informants

The consensus among law enforcement officials across the State is that the new drug laws have enhanced their ability to develop informants.

Drug enforcement relies heavily on informants for information about traffic movements, for identification of local sellers and users, and for the introduction of undercover agents into the drug market.

When the new laws were first under discussion the fear was expressed by police officials that restrictions on the ability of prosecutors to offer pleas and "acceptable" sentences would hinder their ability to entice offenders into cooperation. Our discussions with police and district attorney personnel suggest that the offenders' fear of long prison sentences has outweighed the restrictions placed on bargaining. The net result has been an increase in the activity of informants.

The 1973 drug laws contain one exception to otherwise mandatory prison sentences required after conviction for a class A drug crime. Offenders who have provided useful information to the prosecution may be sentenced to terms of lifetime probation (no prison) if such a sentence is recommended by the prosecutor. (All such sentences must be reviewed by an administrative judge.) This provision together with the latitude which still exists in the minimum prison term set by the court in "lifetime" sentence, provides some measure of sentencing discretion.* In addition, defendants indicted for class A-I and A-II offenses are still allowed to plead down to A-III crimes.

Frank Rogers, who was the Special Narcotics Prosecutor in New York City when the 1973 laws were enacted, told us that several high level informants had come forward, who, Rogers felt, would not have cooperated had they not faced such long prison terms. Rogers believed these dealers reasoned that only cooperation with the prosecutor would get them less than the maximum prison sentence when even the lowest level street dealers were being sent to prison for "life".

Lower level offenders have also been anxious to inform, officials say, because they hope prosecutors will recommend short minimum sentences -- which is common practice among district attorneys -- and because they hope to take advantage of the lifetime probation sentences.

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*The minimum prison term in A-III cases is between 1 and $8^1/3$ years; in A-II cases between 6 and $8^1/3$ years; and in A-I cases between 15 to 25 years. Defendants must serve the minimum term set by the court. After serving the minimum, the Board of Parole determines when the offender is to be released from prison. But even after release, the offender will remain on parole for the rest of his life.

We examined length of the minimum prison term given in class A-III cases during 1974 (Table 5-I).* Of the 260 prison sentences, 170, or 65%, carried the lowest allowable minimum of one year. Another 15% carried minimums of over three years. In order to see if there was any advantage for a guilty defendant pleading instead of going to trial, we compared minimum terms in convictions which resulted from trial and convictions which came as a result of a plea.

We found that outside New York City defendants pleading guilty to an A-III felony (in 1974) generally received sentences with lower minimum terms than defendants convicted after trial. Almost 75% of these defendants pleading to an A-III felony and sentenced to prison received the lowest permissable minimum term (one year) and not one defendant in the Project's sample was sentenced to a minimum longer than three years. In contrast, only about 30% of the defendants convicted after trial received the one year minimum term, and over half were sentenced to minimums of longer than three years. However, in New York City there was no significant difference between the length of sentence faced by defendants pleading guilty and those convicted after trial. About 65% of the defendants in both groups received the minimum term of one year, and 15% received minimum terms of three year or more.

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*Drug Law Evaluation Project staff survey of drug convictions and sentences throughout the State.

TABLE 5-I

Prison Sentences Issued to Defendants Convicted of Class A-III Drug Felonies in 1974

Minimum Length of Prison Sentence	New York City		Rest of State		Statewide Total	
	Disposed of by Plea*	Disposed of by Trial*	Disposed of by Plea**	Disposed of by Trial**	Disposed of by Plea	Disposed of by Trial
One Year	69%	61%	73%	32%	71%	49%
More than one year, up to three years	19%	22%	27%	16%	21%	19%
More than three years	12%	17%	0%	52%	8%	33%
Total	100%	100%	100%	100%	100%	100%
Number of Defendants Sentenced to Prison	126	39	61	31	187	70

*Differences in length of sentence between plead and tried cases are not statistically significant

**Differences in length of sentence are statistically significant

Source: Drug Law Evaluation Project Survey

Offenders upstate therefore seem to have a greater incentive to plead guilty than offenders in New York City. Conversely, in the City it makes sense for a defendant to demand a trial because he has nothing to lose in terms of probable prison sentence.

Evidence is that the probation alternative has been used extensively in some counties. In suburban New York City counties, 25% of all class A-III offenders were sentenced to probation in the first nine months of 1975. This might well account for the flood of informants in Nassau County. According to officials in the District Attorney's office, who keep a count of informants, twice the number of drug offenders chose to cooperate in 1974 than in 1973. In the City, 15% of A-III offenders were sentenced to lifetime probation, but up to half of these were sentenced under the Youthful Offender provisions of New York State Law.* There is no requirement that a defendant provide information to the prosecution to be eligible for Youthful Offender treatment, as is required for lifetime probation. Upstate, only ten percent of A-III offenders escaped a prison sentence.

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*Until August, 1975, the treatment of class A drug offenders as youthful offenders was only available in the First Judicial Department (Manhattan and Bronx counties). At that time, an amendment to State law made class A-III felons eligible for youthful offender treatment throughout the State.

There is some evidence that the lifetime probation sentences are favoring younger offenders. In 1974, 13 of the 25 probation sentences in class A-III cases went to offenders 21 years old and under. This was about twice the youths' share of all class A-III convictions.

At least one prosecutor does not agree that the probation alternative has been helpful. The Chief of the Narcotics Bureau for the Bronx District Attorney believes that a lifetime of probation is not a realistic option for many offenders because they don't have legitimate alternatives to further involvement in crime. Thus, these offenders would constantly be in violation of probation and subject to prison on that score. This official thinks that on balance, the new laws have restrained him from being able to make fruitful deals with informants.

Finally, defendants and district attorneys are taking advantage of the limited plea bargaining which is still allowable, and this undoubtedly helps in developing informants. Theoretically, someone indicted for a class A-I felony, which carries a minimum prison term of between 15 and 25 years, could plead to a class A-III crime, and receive the lowest minimum of one year. He might even be recommended for the probation sentence discussed above. Such latitude, though not as great as that which existed under the old laws, has apparently enabled prosecutors to offer "acceptable" pleas in exchange for information.

According to statewide data for 1974 and 1975, only 20% of the convictions resulting from class A-I and A-II indictments were to the highest charge covered by the indictment. All the other convictions came to lower charges, about half of which were class A-III felonies. These convictions came as the result of pleas.

We were surprised to find that in 1974 (no later data is yet available) defendants who plead guilty to a class A-III offense after having been indicted for a class A-I or A-II crime were just as likely to receive the minimum prison term of one year as defendants originally indicted for a class A-III crime. Two-thirds of all sentences in class A-III cases carried the minimum penalty.

Indictment Policies

We have not found a general tendency to reduce the frequency of indictments in felony drug cases, either in New York City or elsewhere(see Charts 5-B and 5-C).

All the procedural restrictions imposed by the 1973 laws are placed on the post-indictment adjudication process. There is nothing in the laws which prohibits bargaining with a defendant before his case is presented to a grand jury. If the post-indictment restrictions were viewed as particularly burdensome by prosecutors, one response might be to choose against seeking indictments in cases for which indictments were previously requested routinely. On the other hand, one expects a natural reluctance of prosecutors to use this "loophole", particularly because the restrictions were imposed with great fanfare.

The data presented in Tables 5-B and 5-C suggest strongly that indictment policies have not changed.* In New York City, the most serious cases (class A cases) are indicted at a higher rate than other new law cases.

A significant change in indictment policy has occurred in New York City during the past months, however. The Special Narcotics Prosecutor is suggesting that misdemeanor pleas be offered in certain class A-III cases provided prison sentences of six months or more are given. In addition, discretion is being advised in seeking indictments in some class C cases involving possession of heroin and cocaine. This change toward a lenient indictment policy indicates that a downturn in the indictment rates should be expected in the near future.

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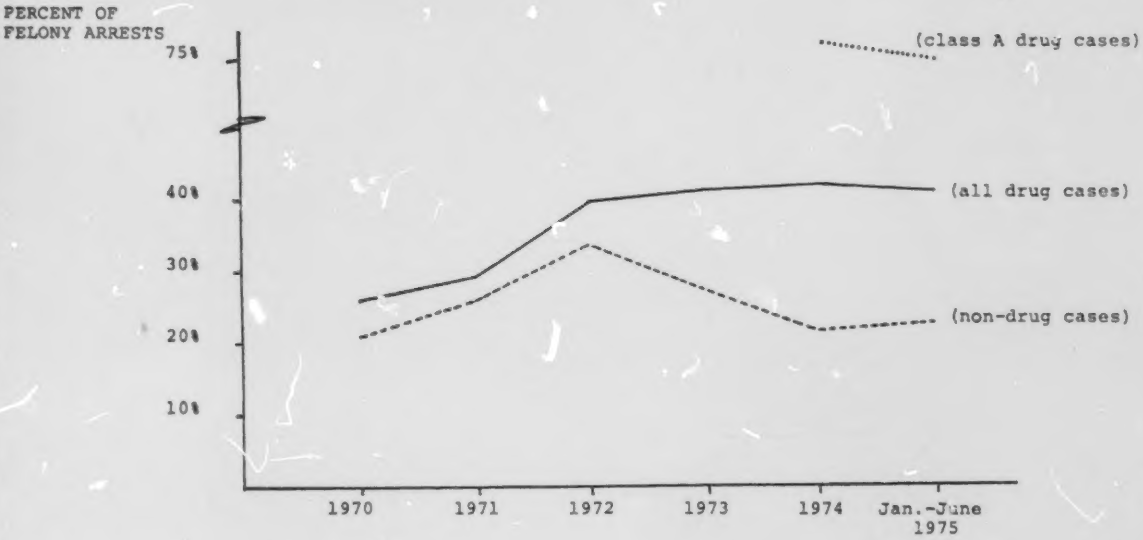
*The steady decline in the rate of indictment in Nassau County began before the new laws became effective. Even with a five year decline, Nassau still indicts a larger proportion of felony drug cases than any of the other counties. This fact may be related to the very high rate of misdemeanor convictions in the Nassau superior courts (See Section 8).

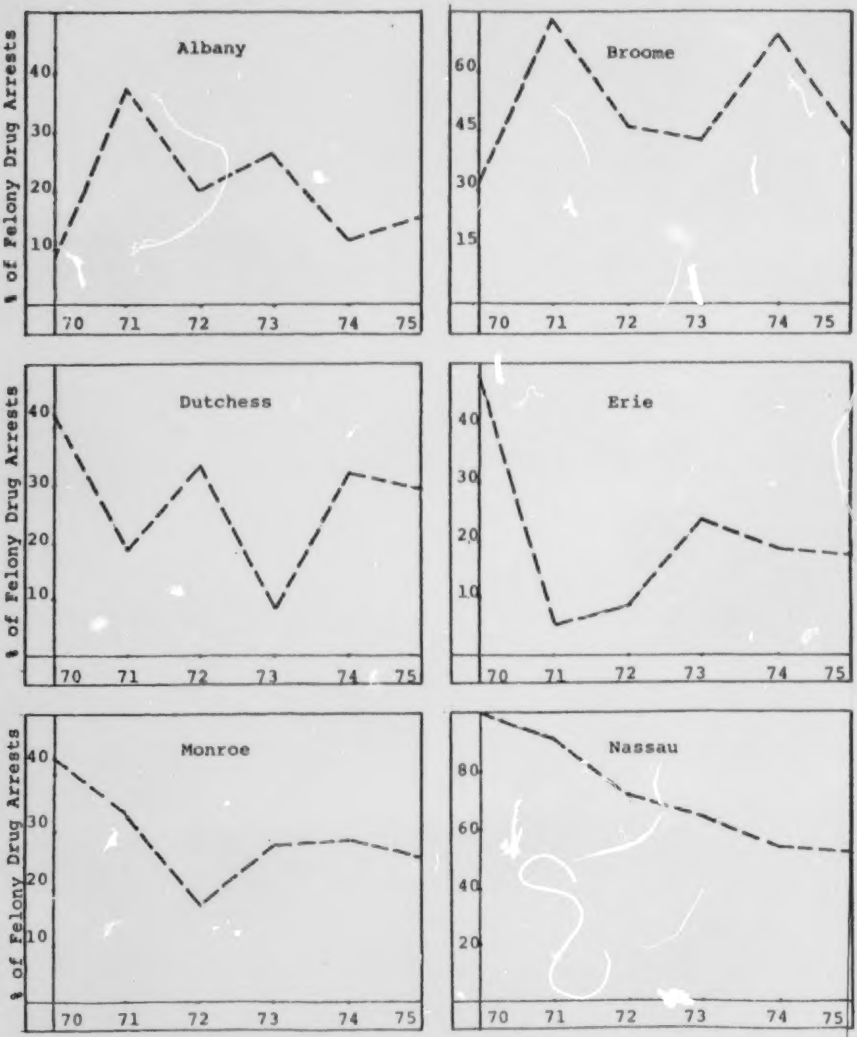
Frequency With Which Felony Arrests Result in Indictments ("Indictment Rate") in New York City



Sources: New York State Division of Criminal Justice Services;
New York City Police Department *Monthly Statistical Report*.

Chart 5-C

Drug Indictments as a Percent of Felony Drug Arrests



Source: New York State Division of Criminal Justice Services

6

THE EFFECTS OF THE NEW LAWS ON THE NEW YORK CITY SUPREME COURTS

Before describing the recent performance of the New York City superior courts, a few words about the organization and the remarkable growth of the City's court system are in order. Rapid expansion has added to the difficult job of managing this very large and complex institution.

The City's superior criminal court -- the Criminal Term of the Supreme Court -- is centrally administered, but is divided jurisdictionally into five separate counties. Prosecution in each of the county branches of the Supreme Court is the responsibility of the District Attorney, who is separately elected in each county.

The system itself has grown enormously since 1972. In the beginning of that year, there were 50 courtrooms (known as "parts") operating in the City as the regular operation of the Court. The first sizeable expansion occurred during 1972 with the inception of the federally funded Special Narcotics Court Program (SNCP). The SNCP added 12 new parts to the system during 1972, and all 12 are still in operation (7 in Manhattan, 2 in Brooklyn, 2 in the Bronx and 1 in Queens). Under the SNCP a special Assistant District Attorney for Narcotics Prosecution is appointed by agreement of the City's five district attorneys and is responsible for the prosecution of about half of the City's drug cases.

Also in 1972, the City and State combined to finance the addition of 13 new parts under the Emergency Felony Case

Processing Program (EFCP). These parts became a portion of the system's regular organization, and were intended for the general purpose of reducing backlogs, which had grown substantially between 1970 and 1972 (See Table 6-I). An additional two parts were furnished under EFCP in 1973.

Finally, in late 1973 and 1974, as a direct result of the 1973 drug and sentencing laws, 31 additional parts were added to the City's Supreme Court system. The formal name for these parts is the Emergency Dangerous Drug Control Program (EDDCP). Nine of the parts were established in Manhattan and were combined organizationally with the seven parts created earlier under the SNCP. Brooklyn received 11 of the new parts, the Bronx received eight, and three of the new parts were assigned to Queens.

Thus, by a series of steps, the already large criminal term of the New York City Supreme Courts more than doubled in size over the short period of three years. Currently, the system operates with a complement of 117 full-time criminal term parts.

For the purpose of processing cases, the Supreme Court is organized into a three tier system which distinguishes it from the "individual calendar" (or IC) system prevalent in many upstate counties. Under an IC system of court organization, one judge follows a case from beginning to end. In the New York City scheme, however, arraignments are handled in a specialized part or parts in each county, and cases are then assigned to pre-trial conference parts -- all-purpose parts -- where they remain until they are ready for trial.

TABLE 6-I

The Changing Backlog in the New York City Supreme Courts (Drug and Other Cases Combined)

YEAR	Indictments	Dispositions	Change in Backlog
1970	20,001	17,463	+2,538
1971	27,308	21,281	+6,027
1972	27,114*	21,873	+5,241
1973	22,458*	24,630	-2,172
1974	20,686	19,685	+1,001
1975	19,720	21,938	-2,218

*Data on indictments not available. Number of arraignments used here.

Source: Management Planning Unit, Office of Court Administration, New York State. Derived from JC-153 forms.

Trials generally take place in specialized trial parts. Each of the four large counties contains one or two arraignment parts* and varying numbers of conference and trial parts. Individual cases and justices are assigned to particular parts. In an IC system, cases are assigned to individual justices. Assignments of justices to specific parts may be changed monthly, but they often remain the same for months at a time.

There is some specialization among parts with respect to the kinds of cases which are assigned to them. The 12 parts created and federally funded under the Special Narcotics Court Program handle drug cases exclusively. The parts created through the Emergency Dangerous Drug Control Program handled drug and predicate felony cases almost exclusively until recently when they began to take on other cases.** Some counties have established parts to specialize in homicide cases or other major felony offenses.

The Court's expansion between 1972 and 1975 took place at a time when indictments had been declining from a peak reached in 1971, and has contributed to the success of the criminal term in achieving a balance between dispositions and indictments in non-drug cases, so that the tremendous growth of backlog experienced in the 1970-1972 period has stopped and has begun to be reversed (See Table 6-I). The reversal has been noteworthy because the trial rate had almost doubled between 1973 and 1975. Trials absorb much more court time than other dispositions and thus are particularly expensive to the system. Our estimates indicate that every time the citywide trial rate increases by one percentage point (for drug and other cases combined), nine additional full-time court parts would be required annually to keep the number of dispositions constant. Although the backlog of non-drug cases in New York City stopped growing in 1973, the pending drug caseload grew for two full years following the effective date of the new drug laws despite the 31 additional court parts added under the Emergency Dangerous Drug Control Program.

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* Manhattan and Bronx counties have two arraignment parts each, while Kings and Queens Counties have one arraignment part each.

** See p. 80 for some additional detail.

The prime reason for the continuing growth of the drug case backlog has been the slowness with which class A felony cases generated by the 1973 drug law have moved through the system. As a substantial number of these cases finally reached disposition late in 1975, the backlog growth decelerated. By the fourth quarter of 1975, the drug case backlog had begun to decline slightly.

The Importance of Class A Cases in the Supreme Court Workload, Sept. 1, 1973 - Dec. 31, 1975

Case Type	Indictments	Dispositions	Rise in Backlog	Contribution to Backlog
Class A Drug Felonies	4,197	2,002	2,064	82%
Other New Law Drug Felonies	1,325	1,004	352	18%
Total New Law Drug Felonies	5,522	3,006	2,516	100%

Source: Estimate based on data from the Management Planning Unit, Office of Court Administration and New York State Division of Criminal Justice Services, Form D. See Table 6-II for computation method.

Growth of the Drug Case Backlog

Table 6-I gives an indication of the growth of the backlogs (both drug and other) which led to the expansion of the Supreme Court.* Indictments -- the input to the Supreme Courts -- jumped 35% (from 20,000 to 27,000) in one year between 1970 and 1971, an increase which could not possibly be matched by dispositions. Indictments remained stable during 1972, and declined sharply in 1973.

According to this set of estimates, backlogs rose by 20% of indictments in both 1971 and 1972 and had grown by nearly 14,000 cases between 1970 and 1972. It is useful to look at pending caseloads in terms of the number of months they represent for the workload of the courts. By this measure, the backlog grew by an equivalent of nearly eight months' worth of dispositions between 1970 and 1972.** This was an emergency by anyone's definition.

Drug cases made a heavy contribution to the backlog in 1970, which was the peak year for felony drug arrests under the Police Department's mass arrest policy. The 26,000 felony drug arrests resulted in over 7,000 indictments, of which over 1,500 remained pending at the end of the year. (See Table 6-II. The qualifications to the estimates in Table 6-I also apply to Table 6-II.)

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*There is a confusing array of figures available to measure the courts' workload, all produced by official sources. Appendix II presents a discussion of the various estimates. The ones used here produce conservative estimates of increases in the backlog for 1970, 1971, 1972 compared to the figures from other sources. Estimates of reductions in backlogs during 1973,1974 and 1975 are greater than those from other sources. In each year, then, these estimates provide the most favorable view of the courts' activities.

**14,000 (growth of backlog) ÷ 22,000 dispositions in 1972 X 12 (months per year).

Old law drug cases also contributed in a small way to the 1971 growth in the City's pending caseload (500 out of the 6,000 case increase were drug cases). By 1972, the backlog of drug cases seems to have stabilized, and 1972 and 1973 saw very small declines. Changes of this magnitude (200 to 300 cases per year) are negligible enough in terms of the total workload to be ignored. The measures themselves are not accurate enough to reflect changes of these small amounts.

In 1974, when the new law drug cases began to appear in large number, most of these cases remained pending at year's end. Only about 750 new law drug cases were disposed of in 1974 compared to about 2,650 total drug dispositions.

In the normal course of events, some buildup in backlog would be expected to occur. Cases cannot be disposed of instantaneously. If it takes a minimum of, say, three months to completely process a case, then a pending caseload of three months' worth of indictments would be normal. But by the end of 1974, the 2,000 pending new law cases already amounted to eight months' worth of indictments. There can be no doubt that a pending caseload of that size exceeds the magnitude explainable by what should be the minimum processing time.

More serious is the fact that the size of the pending caseload grew steadily, though more slowly, during the first nine months of 1975. Other counties in the State also saw

TABLE 6-II

Changes in the Backlog of Drug Cases in the New York City Supreme Courts

YEAR	Indictments	Dispositions	Change in Backlog
1970	7,381	5,761	+1,620
1971	6,638	6,131	+ 507
1972	4,086	4,300	- 214
1973	3,312	3,358	- 46
1974	3,278	2,366	+ 912
1975	2,855	2,739	+ 116
New Law Only			
1973	199	6	+ 193
1974	2,654	769	+1,835
1975	2,669	2,231	+ 438

Sources: Management Planning Unit, Office of Court Administration, New York State, JC-153 forms; and New York State Division of Criminal Justice Services, Form D.

Data from Form D, Division of Criminal Justice Services, are used to determine the proportion of indictments and dispositions accounted for by drug charges in each year. These proportions were applied to the total number of indictments and dispositions reported by the Office of Court Administration, which issues a more accurate count of total court actions, but does not isolate drug charges.

some buildup of their new law drug caseload during 1974, but by early 1975, those backlogs were already being reduced. (See discussion in Section 7.) It wasn't until the fourth quarter of 1975 that the New York City backlog was reduced. Even then the reduction was less than 100 cases from what had become a backlog of over 2,500 cases.

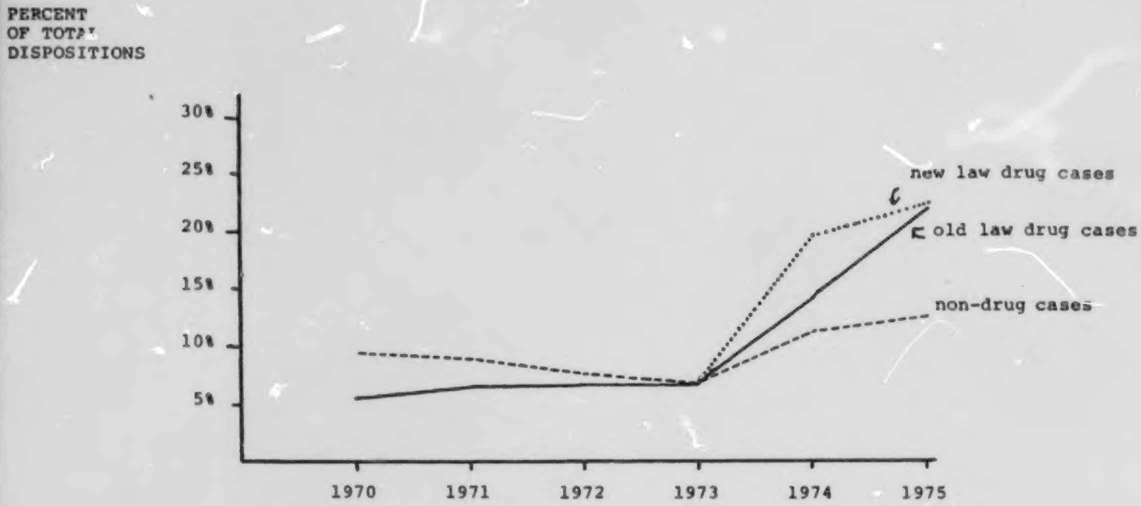
The 1974 and 1975 growth of the new law case backlog came at a time when the courts were reducing the pending caseloads of non-drug indictments. The backlog of indictments other than new law drug cases fell by 900 in 1974, and by an additional 2,700 in 1975.

The new law backlog would have grown even more had it not been for a sharp rise in the frequency of dismissals in drug cases (See Chart 6-A). We questioned several prosecutors about the reasons for the substantial increase in dismissals in 1974. They believe that the rise could be explained by the consolidation of indictments (and superceding indictments) facing individual defendants. Typically, if a defendant has more than one indictment pending, prosecutors might settle for a plea to one of the indictments in exchange for dismissing the others. This is itself a kind of plea-bargaining.

There is no evidence available on the number of dismissals which occurred as a result of consolidation under the old laws, but we doubt the prosecutor's explanation. There is no reason to believe that the frequency of consolidations should increase so strikingly between 1973 and 1974. The new laws do not permit the dismissal of Class A drug cases in satisfaction of other indictments. Rather than explaining

CHART 6-A

New York City: Cases Disposed by Dismissal As A Percent of Total Dispositions in the Supreme Courts



Source: New York State Division of Criminal Justice Services

the rise in dismissals as a result of consolidations, the increase appears to be a natural response to the pressures of an ever-increasing backlog.

We do not yet know whether the increase in dismissals of non-drug cases during 1974 and 1975 support this suggestion (See Chart 6-A). If the increase in dismissals in non-drug cases was concentrated among predicate felony cases (which were processed in the same courts as the new drug cases), that would support the hypothesis that dismissals have increased in response to backlog growth. More evidence on this point will be forthcoming when the Project examines the disposition process for predicate felony cases later this year.

The Role of the Demand for Trials

The State-financed addition of court resources was furnished in response to predictions by judges and others that the plea bargaining restrictions and mandatory sentencing provisions in the new laws would leave very little incentive for defendants to plead guilty. Instead, defendants were expected to carry their cases to trial in large numbers.*

They have. There were 335 trials of new law cases during 1975, compared to 218 trials of old law drug cases during 1973, the last (nearly) full year of dispositions under the old laws. There were 20% fewer dispositions of drug cases in 1975 compared to 1973 (2,750 compared to 3,350). Thus the trials accounted for a much larger share of the courts' drug case workload in 1975 than it did in 1973. The trial rates are shown in Chart 6-B, which indicates that the rate climbed from 6.5% of dispositions in 1973 to 15.0% of new law dispositions in 1974 and 1975.

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*The following subsection presents some estimates of the effect of increasing trials on the productivity of the courts.

A tendency toward increasing trial activity predated the effective date of the new laws, so some of the increase during the past two years might have occurred even under the old laws. But there is an unmistakable acceleration evident in 1974, which seems clearly related to the effects of the 1973 laws.

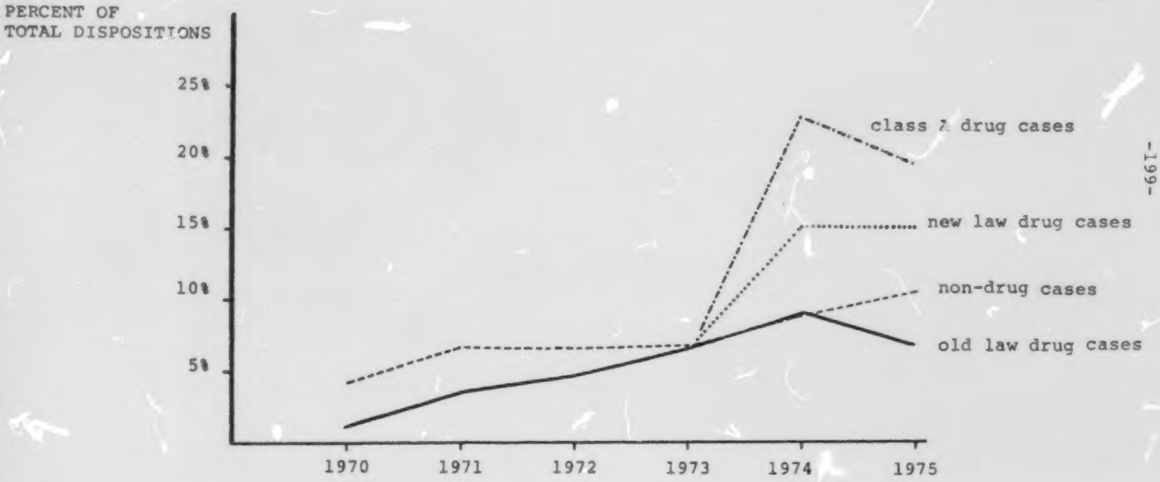
This conclusion is strengthened by the fact that in class A cases -- those cases which face the most severe restrictions in plea bargaining and sentencing -- the trial rate was higher than in other new law cases (See Chart 6-B).

The frequency of trials in non-drug cases also increased faster in 1974 and 1975 than would have been expected on the basis of past experience. In these cases, trials grew from 6.6% of dispositions in 1973, to 8.7% in 1974, and further to 10.1% in 1975. While these increases are smaller than the increases seen in drug cases, they do suggest an accelerated inclination toward trials beginning in 1974.

Some part of this growth may be attributable to the plea bargaining restrictions and mandatory prison sentences which the 1973 laws placed on second felony offenders -- the so-called predicate felony provisions. Judge David Ross, the City's Administrative Judge, believes that these restrictions have had much the same effect on non-drug trials as the class A drug provisions have had on drug trials. Faced

CHART 6-B

New York City: Cases Disposed By Trial As Percent of Total Dispositions ("Trial Rate") in the Supreme Courts



Source: New York State Division of Criminal Justice Services

with certain imprisonment upon any plea to a felony, defendants, it can be argued, will choose to go to trial. This view has been supported by staff of the Legal Aid Society, which represents most indigent defendants in New York City.

The incentive to go to trial in these cases is not universal, however. A defendant facing a class C charge, for example, might be faced with the following options: (1) go to trial on the class C charge; if found guilty, receive a minimum sentence as a prior felon of three years (but the minimum sentence could be as high as 7½ years); or (2) plead guilty to a class E felony and receive a minimum sentence of 1½ years. Some defendants will take a chance on a trial, while others will take the sure thing by pleading, even though they must go to prison. Some officials outside the City believe that, on balance, most of their defendants prefer the sure thing.* A firm answer on the choices defendants make between trials and pleas will have to await the Project's analysis of the disposition process for predicate felony cases.

The following section presents some additional explanations for the failure of the City system to keep up with the demands the 1973 laws have placed upon it.

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*Even the results of a plea are not always certain. It is only after the minimum term has been served that the Parole Board considers release of the defendant. The offender could serve as long as twice the minimum term set by the court.

Other Reasons for the Rising Backlog of New Law Cases

The rapid addition of new law cases to the backlogs of the New York City Supreme Court raises several questions about the productivity of the courts. Were the resources provided to deal with the new laws sufficient on the basis of past performance of the system? Have the new drug parts been significantly less productive than other parts within the Supreme Court? What lessons can be learned to guide future planning efforts?

In addition to the rise in the demand for trials discussed earlier, three other factors have contributed to rapid growth of the backlog of new cases in the City.

First, the productivity of the new courts, in terms of their ability to dispose of large numbers of cases, did not match the productivity of the established courts in the City.* Even after allowing for differences in the frequency of trials, the new courts lagged. Second, given the productivity the new courts did achieve, there were not enough new courtrooms furnished to deal with the demand for trials that resulted from the newly imposed restrictions on plea bargaining. Third, there was, for budgetary reasons, distortion in the workload assigned to the new courts.

Many parameters of court performance vary greatly from month to month, so analysis over short periods of time is not very informative. Performance measures for two six month periods are analyzed here. Data for periods prior to 1974 are not available, nor is comparable information for other parts of the State.

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*Productivity is defined here as the average number of dispositions achieved in one day of a court part's operation (referred to as a part-day). Dispositions may come as a result of trials, pleas, dismissals, and other final court actions.

Productivity

Manhattan (New York County) is the only county with enough courtrooms specializing in drug cases to provide a sound basis for comparison with non-drug courts. Currently, there are 18 parts devoted in whole or in part to drug cases in Manhattan. They are housed in one building, and they are under the administrative direction of one judge (Michael Dontzin recently replaced Norman Fitzer). The City's Special Narcotics Prosecutor, Sterling Johnson (this post was formerly held by Frank Rogers), is responsible for all drug prosecution in these court parts. (Non-drug cases are prosecuted by the Manhattan District Attorney.)

During the first half of 1974, when the backlog of new law cases was increasing at its fastest pace, an equivalent of 15 full-time court rooms (parts) were devoted in whole or in part to processing drug cases.* Some of the parts had been established under the Special Narcotics Courts program, the rest under the Emergency Dangerous Drug Program. During that same six month period, an equivalent of 17 full-time non-drug courtrooms were operating in Manhattan.

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*The number of parts actually operating from day to day may vary. To smooth over day-to-day fluctuations in part activity, the number parts will be described as "full time equivalent parts." This is determined by dividing the number of part-days of activity by the number of work days in the time period.

The 15 drug parts disposed of 1,249 indictments;* the 17 non-drug parts disposed of 2,423 indictments. On a per part basis, the non-drug parts disposed of 1.2 cases every day a part was open; the drug and predicate felony parts disposed of only 0.7 cases per part day (See Table 6-III). To examine how much of the difference in productivity was due to the higher rate of trial in the drug parts, we estimated what the output per day would have been in the non-drug parts if they had experienced the higher trial rate actually experienced in the drug parts. We estimate that productivity in the non-drug parts would have fallen from 1.2 cases a day to 1.0 case per day. Thus the higher trial rate explains about half the difference in productivity between drug and non-drug parts.**

Translating the productivity per part into estimates of resources required to dispose of the actual caseload results in the following estimates. The 15 drug parts disposed of 1,249 cases during the six month period. We estimate that if those same parts had operated with the productivity of the non-drug parts, (but had labored under the higher trial rates evident in drug and predicate felony cases), they would have disposed of over 1,700 cases in the first half of

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*The New York City Supreme Courts count indictments and dispositions in terms of "defendant-indictments." Under this scheme, one defendant indicted on two separate indictments is counted as two defendant-indictments. Similarly, two defendants indicted under one indictment are counted as two defendant-indictments. In this Report, the terms indictments and dispositions reflect defendant-indictments.

**See Appendix III for method of calculation.

Table 6-III

Productivity in the Manhattan Supreme Courts

January-June, 1974	Manhattan Drug and Predicate Felony Parts	Other Manhattan Parts
Trial rate	9.9%	7.2%
Time required for trial disposition	7.1 days	6.4 days
Time required for non-trial disposition	0.75 days	0.37 days
Dispositions per part-day	0.72 dispositions	1.24 dispositions
New cases (input) per part day	1.08 cases	0.78 cases
Average number of appearances per disposition*	21	11
January-June 1975		
Trial rate	13.5%	10.3%
Time required for trial disposition	5.7 days	6.1 days
Time required for non-trial disposition	0.78 days	0.52 days
Dispositions per part-day	0.69 dispositions	0.92 dispositions
New cases (input) per part day	0.59 cases	0.91 cases
Average number of appearances per disposition*	21	14

Source: Monthly statistical reports of the New York City Administrative Judge (unpublished).

*New York State Office of Court Administration, Court Information Service, "Statistical Summaries and Comparisons for New York City" (monthly).

1974, compared to the 1,249 cases actually disposed of. Production at the 1,700 case level would have been nearly sufficient to keep backlogs from growing since there were 1,859 arraignments in the drug courts during the period.

The time it took to dispose of a case by trial was about the same in the drug parts (7 days) and the non-drug parts (6.5 days). But, during the first half of 1974, it took twice as much court time to dispose of a non-trial case in the drug parts (3/4 of a part-day, compared to 3/8 of a day in non-drug parts). This difference is probably explained largely by the number of court appearances it took to dispose of a case. During the first half of 1974, the average case appeared on the calendar 11 times in a non-drug part before disposition. In drug parts, cases appeared an incredible 21 times before disposition.* One of the greatest needs in the court system is to determine the reasons for such frequent adjournments so that remedial action can be taken.

Differences in productivity between the drug and non-drug parts in Manhattan narrowed during the first half of 1975. The drug and predicate felony parts actually disposed of trials in slightly less time than the non-drug parts (about 6 days per trial disposition in each case). But overall productivity in both courts declined below 1974 levels as it took somewhat longer to dispose of non-trial cases. The average number of appearances per case increased from 11 to 14 between 1974 and 1975 in non-drug parts, while the average number of appearances remained at 21 per case in drug parts.

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*The raw number of appearances may be misleading because it could be reduced simply by increasing the time between appearances, e.g. until a case was clearly ready for disposition. In this respect forcing cases to appear on a calendar might be viewed as a pressure tactic against the prosecutor and defense counsel. Nevertheless, this is a lot like spinning wheels, and it does take a lot of effort to produce defendants and witnesses over and over again. Although we have not done a statistical analysis of the relationship between number of appearances and the time it takes to dispose of a case, that relationship is likely to be a positive one.

An equivalent of 17 full-time drug and predicate felony parts were in operation during the first six months of 1975, and they disposed of 1,450 cases during that period. We estimate that non-drug parts operating for the same number of days would have disposed of 1,650 cases, 14% more than the drug parts, if the non-drug parts had been subject to the higher trial rates actually witnessed in drug cases. Again, the high demand for trials in the drug parts can explain only about half the difference in productivity between drug and non-drug courts. The very large number of adjournments in drug case suggests that the rest of the difference is probably attributable to the failure of the drug parts to move cases on to disposition. The discussion in Section 7. gives some reasons for frequent adjournments in drug cases.

The finding that productivity in the new drug courts has been lower than the productivity of the existing courts is not surprising. When the court system is viewed as a large and intricate production process, the addition of a substantial number of judges (and associated personnel) is analagous to adding a new branch to a factory. If the technology used in the new branch was just the same as the technology common in the basic plant, then the new additions would be expected to exhibit lower productivity than the basic plant. In the jargon of economists, the additional resources exhibit "diminishing marginal productivity."

The one way to avoid lower productivity is to improve the technology of the production process, i.e. to do things differently (and better). In industry, machines are often substituted for manpower in order to improve productivity. Alternatively, a change in the organization of the process, or even superior know-how on the part of the new employees, could be used to improve productivity.

The newly furnished courts, however, were organized along the lines of the existing Manhattan courts and the judges called upon to preside over the new courts were, in general, less experienced in the New York City court system.

Thus, it would have been normal to expect some lag in the productivity of the new courts. We know of no way, unfortunately, to gauge the extent to which the actual productivity achieved by the new courts was above or below "reasonable" levels.

Total Resources

We estimate that at the productivity actually achieved by the Manhattan drug parts, it would have taken eight additional full-time parts during the first half of 1974 to avoid the rapid buildup of backlogged cases. From the point of view of the demand for trials, the 17 parts which were in operation could have absorbed a trial rate of only 2.8% and still kept current. The actual trial rate was 9.9%.

Extrapolation of these resource needs to the rest of the City is difficult because the organization of the new courts varies from borough to borough. In rough terms, though, if the Manhattan calculations are typical, an additional 15 parts could have been productively used citywide.

We have also estimated the resources which would be required over the next year to a) keep up with the current inflow of drug indictments and b) reduce the backlog to some predetermined level. The backlog of drug cases now represents about ten months work. If the court wanted to reduce the backlog over the next year to the point where it represented six months' work, the equivalent of approximately 35 full-time court parts working on nothing but drug cases would be necessary.*

It is possible that the resources devoted to drug cases will approximate this level. There are still 12 Special Narcotics Court parts operating citywide. Thus an equivalent of 23 parts out of the existing 31 Emergency Dangerous Drug Control parts -- or some combination of these parts and regular Supreme Court parts -- would have to be devoted to drug cases to reach the goal of reducing the backlog to six months' worth of dispositions. Such an allocation of court resources is not unreasonable to expect.

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*This estimate is based on current indictments and trial rates and court productivity between the extremes of productivity recently experienced.

The reduction in the citywide drug backlog during the last quarter of 1975, though quite small, is encouraging. A lower volume of indictments in the second half of 1975 compared to a year earlier, and recent stability in the trial rate after a huge initial increase (Chart 6-B), suggest that the outlook for processing drug cases in the City courts is far brighter than the past.

To achieve steady progress, however, the pressure to dispose of drug indictments must be maintained. Governor Carey last year relaxed a requirement which controlled the assignment of cases to the courts financed by the State under the Emergency Dangerous Drug Program. Under the old requirement, 80% of the cases assigned to the newly furnished parts were to be drug and predicate felony cases. Since the relaxation of that requirement, several counties outside the City have already assimilated the drug parts into their regular court operation. Judge Ross recently began to assign non-new law cases to the City's drug parts in greater number, and has informed us that the distinction between those parts and the other components of the Supreme Court will slowly be abandoned.

Distortion of the Workload

All through 1974, the new drug parts established under the Emergency Dangerous Drug Program were responsible for both drug cases and cases in which a defendant had a prior felony arrest. The latter cases are those which are potentially subject to the predicate felony provisions of the new laws (which would have applied if the offender had a prior felony conviction). Early in 1975, after the pending caseload in the new parts had increased for a full year, assignment of these "potential predicate felony" cases reverted to the regular (non-drug) parts of the court.

In Manhattan, the 1,450 "potential predicate felony" cases assigned to the newly created parts accounted for 45% of the input to those parts during 1974. Out of these cases, it is likely that approximately 500 actually involved a defendant with a prior felony conviction.* These would be the true predicate felony cases. If the remaining 950 cases had been assigned instead to the regular parts of the court, it is likely that the new parts would have come much closer to balancing their workload. The improvement in the picture would not, however, have been as great as the raw numbers suggest because the cases which did not prove to be subject to the predicate felony provisions were probably the ones most easily disposed of. The rate at which these non-predicate felony cases went to trial was probably lower than the rate for true predicate felony cases.

There is also the possibility that the new courts would have remained idle a good deal of the time during their early months in the absence of some non-new law cases to work on. The issue would then have boiled down to a trade-off between

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*A sample of felony arrests in New York City in January, 1975 indicated that the average number of felony arrests among defendants having at least one prior arrest was three. Roughly 1 out of every 8 felony arrests results in a felony conviction, resulting in an overall likelihood of conviction of about 35%.

1) using the new courts in part to alleviate the normal pressures on the Supreme Court or 2) prosecuting the new law cases exclusively. The second choice may have caused some slack time in the new courts, but it would probably have speeded up the processing of new law cases somewhat by keeping pressures on prosecutors and defense attorneys to prepare cases so that the courts could be kept busy.

From the point of view of court management -- and there was little if any dissent from this view at the time -- the more the new courts were integrated into the regular operation of the Supreme Courts, the more flexibility there would be in assigning cases to the various components of the court, and the more the priorities of court management could be pursued. From this perspective, the assignment of the "potential" predicate felony cases to the new courts was reasonable.

On the other hand, from the point of view of the Emergency Dangerous Drug Control Program, for which the Legislature was willing to spend up to $40 million a year, it appears that the potential "predicate" felony cases should not have been assigned to the newly created parts. There was a reduction in the backlog of cases in non-drug parts during the first half of 1974, just at the time the backlog was growing to large proportions in the drug parts. Better balance could have been maintained if cases had been screened prior to indictment so that only those cases in which the defendants with prior convictions would have been assigned to the new parts. Pre-indictment screening would have been relatively inexpensive.

The experience of researchers indicates that the commitment of several clerks to complete the criminal histories of defendants in the "potential" category would have made the job feasible. It is likely that the clerks would have been financed by the State as part of the drug program.

There was, however, one strategic reason for overloading the new parts relative to the regular portion of the Supreme Court. The regular parts of the Supreme Court in New York City are financed primarily from funds appropriated by the City -- so-called Tax Levy funds. The parts furnished under the Emergency Dangerous Drug Program are financed solely by the State of New York. Early in 1974, when State appropriations for the drug program had not been fully committed, and when the City was beginning to feel the fiscal pressures of the 1974-75 budget cycle, the likelihood of receiving additional funding from the City seemed slim compared to the prospects of additional State funds. If the need for more drug parts could have been established, the State would have financed these resources. However, the need for additional resources could not be established in time for the State's 1974-75 budget (the laws had been in operation for only a few months when the 1974-75 budget was being prepared). Additionally, the Governor's authority to appoint new judges to sit in new law cases expired on June 30, 1974.

Distortion of the workload might not have occurred if the incentives to seek funds from alternative sources had not existed. Future distortions of this type might be avoided if a single funding source for the Supreme Courts were established. This is only one of several issues concerning the financial and management organization of the State courts. But it would support the argument that, because the administrative responsibility of the courts runs through a statewide Administrator and a statewide Administrative Board composed of senior judges, the State should be the single funding source. Immediate State assumption of the costs of the Superior Courts -- estimated to be about $100 million statewide for the current fiscal year -- may not be feasible. However, it may be possible to negotiate a gradual State assumption of costs over a five-year transition period. Such an arrangement would have to recognize joint budget-making authority during the transition so that neither the State nor the City could impose obligations unilaterally upon the other.

Other Problems of the Planning Process

At the time new resources were being allocated in mid-1973, it was impossible to accurately project the effects of the radically new provisions of law on the workload of the courts. During the legislative process, there were only guesses about actions that the police might take in enforcing the new laws. Uncertainty about police policy, particularly with respect to street level enforcement activities, was resolved to some extent in May, 1973. Former Police Commissioner Donald Cawley informed us that the New York City Police Department decided at that time to maintain its priority in favor of cases aimed at middle and upper level drug dealers, and rejected the option of returning to the policy of dragnet arrests it had followed between 1969 and 1971.

Two other important pieces of information remained lacking. Although there was universal agreement that the new laws contained incentives for defendants to choose to go to trial (rather than to plead guilty), there was no experience from which to draw estimates of the degree to which trials would be demanded. The best attempt at an analysis of these questions was carried out by the New York City Criminal Justice Coordinating Council (CJCC) in response to the Governor's original proposal which would have banned plea bargaining altogether for some crimes and would also have imposed mandatory definite lifetime sentences (with no parole possible). The CJCC analysis was based on the assumption that 85% of new indictments for class A felonies would result in a trial, and concluded that the minimum of 162 new court parts would be required in the City to successfully manage the workload brought by the new laws. The 85% trial rate was an unheard-of figure at the time, but there were no challenges to the assumption because no one planning for system exapnsion had any concrete reason to believe that figure or any other was the correct one. As it turned out, about 20% of new class A drug indictments have resulted in trials, but the plea bargaining restrictions in the final bill were less severe than those proposed in the original.*

The experience of the last two years with the increasing number of trials under the drug laws has provided experience which, though limited, is sufficient to allow estimates of the effects that future proposed changes in law may have on the demand for trials. For example, the Project staff was able to make fairly detailed predictions of the demand for trials that would result from implementation of changes made to the drug and sentencing laws during the 1975 legislative session (amendments which were eventually vetoed by the Governor).

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*The State Administrator of the Courts projected a need for 133 new parts in New York City on the basis of the final bill.

Another problem of the early planning process was that only a crude estimate could be made of what a particular demand for trials would mean in terms of the need for new judges. CJCC's projection that a minimum of 162 new judges would be required in New York City alone made an attempt at precision somewhat academic. There were only 100 new judges available statewide, and several of these were to be judges for the family courts who would not be available to preside over new law cases. Although the estimate of 162 new judges was crude, it was consistent with the assumed 85% trial rate. In fact, it assumed doubling the average number of trials which could be conducted in a court part per year. Number of trials per year was the only specific measure of productivity used in the estimating procedure.

Somewhat more precision would be possible today, thanks to the development of comprehensive regular information regarding input and output of cases, both for the Statewide Court system, and for the City's Supreme Courts. The recent improvements in information for the City courts include details about the time courts are in session, and the proportion of time spent on trials and other matters. Information of this kind allows for the first time the estimation of the costs of conducting trials. For example, by comparing the time it takes to dispose of a case by trial with the time it takes to process a non-trial case, the cost of trials in terms of other dispositions can be estimated. For New York City, the ratio of trial time to non-trial time varies greatly depending on the group of court parts and the time period under study, but it is clear that trials are very expensive. The system gives up between six and eighteen non-trial dispositions for every trial it conducts.*

A second kind of analysis made available by the new management information system is the determination of the marginal cost of a general increase in the demand for trials. As noted earlier, estimates based on the productivity of the first six months of 1974 indicate that for every one percentage point increase in the citywide trial rate, an additional nine full-time court parts would be required. The annual cost of each additional part (including support staff) under the Emergency Dangerous Drug Program is roughly $750,000. Thus the financial implications of a change in the trial rate can be enormous, with a meager one percent change costing over $6 million per year.

The 1973 laws themselves provided the seeds for improved statewide information by giving the New York State Division of Criminal Justice Services (DCJS) the responsibility for data collection and regular reporting of information relevant to felony case processing. The resulting reports and background materials made available by DCJS have made much of the Project's analysis possible. They also provide useful management information on a regular basis.

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*This estimate is based on current indictment and trial rates and court productivity between the extremes of productivity recently experienced.

7

THE EFFECTS OF THE NEW LAWS ON THE SUPERIOR COURTS IN SIX UPSTATE COUNTIES

Developments in felony case processing in six counties outside New York City were examined in order to analyze the apparent ability of upstate jurisdictions to cope with the procedural restrictions embodied in the new laws. The following counties were included in the analysis: Albany, Broome, Dutchess, Erie, Monroe, and Nassau. Erie and Monroe counties contain the State's second and third largest cities, Buffalo and Rochester, respectively. With a population of 1,350,000, the Buffalo metropolitan area was the 24th largest in the country in 1970. The Rochester metropolitan area had a population of 960,000 in 1970. Nassau County is the largest suburban county in the New York City metropolitan area, with a population of 1,400,000. Albany County, which includes the city of Albany, the State's capital, has a population of 290,000. Broome and Dutchess counties each with a population of 220,000, are the counties with the smallest populations covered in this Report.

The relative scales of the superior court systems in these counties can be seen from Table 7-I. Nassau County, with a total of 12 criminal term judges, has the largest superior court complement of any county outside New York City. Even so, it supports barely ten percent of the number of judges in the City's Supreme Court (Criminal Term).

Table 7-I

The Size of the Superior Court Systems of Six Upstate Counties

	Albany	Broome	Dutchess	Erie	Monroe	Nassau	New York City
Number of "Regular" Criminal Term Judges	1	1	1	7	4	8	86**
Judges added Under the Emergency Dangerous Drug Control Program	1	0	0*	3	3	4	31
Total Number of Indictments, 1974	231	432	306	1,146	1,429	2,858	19,488
Number of Drug Indictments, 1974	32	78	67	271	281	709	3,081
(Percent of Total)	(13.9%)	(18.1%)	(21.9%)	(23.6%)	(19.7%)	(24.8%)	(15.8%)
Percent of Drug Law Convictions, 1972-74 (old law), Which Involved:***							
Heroin	53%	20%	92%	34%	23%	30%	68%
Marijuana	13%	60%	--	28%	59%	48%	12%

* One judge who normally sits in civil proceedings was transferred to handle criminal cases between September, 1974 and June, 1975.

** Includes "special" courts furnished under the Federal Special Narcotics Program and the Emergency Felony Case Program.

*** Source: Drug Law Evaluation Project Survey

Upstate courts have encountered some of the same pressures that the City courts have faced in trying to implement the 1973 drug laws, but they have, in general, fared better than the City courts in dealing with the problems. The favorable outcome is traceable to the relatively low frequency of class A indictments. This, in turn, has meant that the demand for trials in drug cases has not been as burdensome as it has become in the City.

Only Albany County managed to escape the buildup in the drug case backlog during 1974. Each of the other counties saw its pending caseload grow, and while the increases were very small compared to the rise in the New York City backlog, they were not negligible in terms of the number of drug indictments in these counties.

Change in the Pending Caseload of New Law Drug Indictments During 1974

COUNTY	Number of Cases	Percent of New Law Drug Indictments
ALBANY	-9	--
BROOME	+33	42.9%
DUTCHESS	+21	33.9%
ERIE	+150	66.7%
MONROE	+150	58.1%
NASSAU	+549	80.3%
New York City	1,885	64.0%

Source: New York State Division of Criminal Justice Services

In retrospect, it is not surprising to see some growth in the pending caseload during the first year the new laws were in operation. All jurisdictions began the year with virtually no backlog of new law cases -- the laws had been in effect for only four months -- and it takes some minimum amount of time to process even simple cases through the court system. The caseload that can normally be handled in this minimum processing time represents the smallest "backlog" one would expect to find pending in the courts at any time.

Nonetheless, the growth of the pending caseload in these counties was not of enormously different proportions from the growth experienced in New York City, where the situation has always been viewed with considerable gloom. We wondered why officials in these other counties remained so calm.

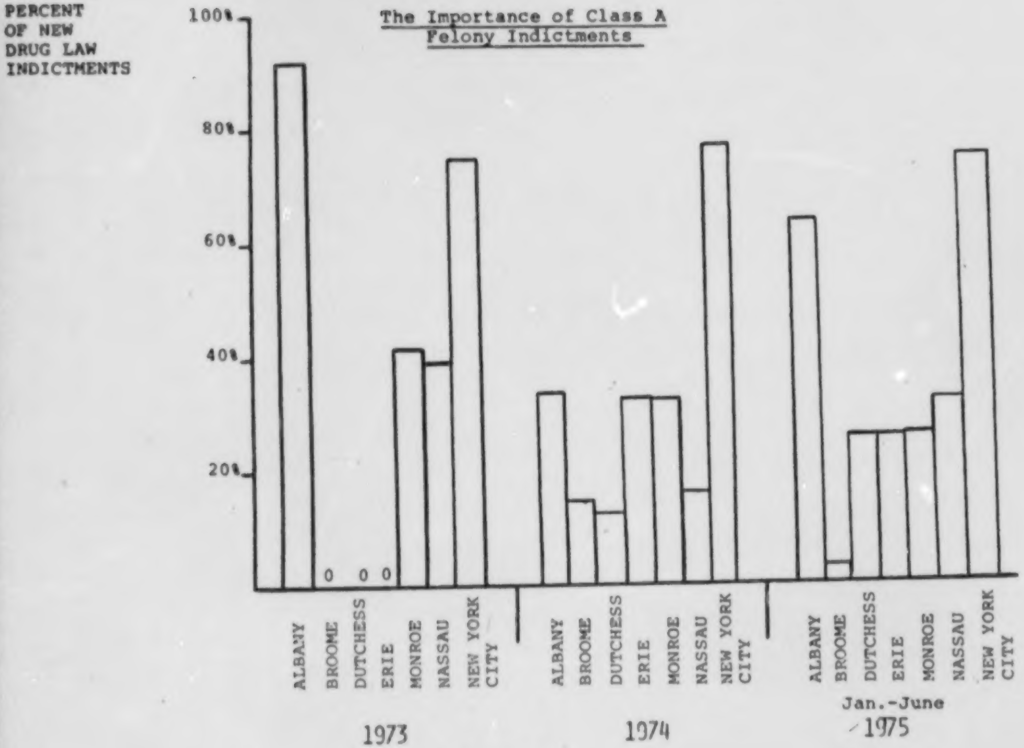
Part of the explanation came from examining developments in each of the counties in turn. There are a few general points, however. First, when we began asking questions early in 1975, backlogs had already begun to decline. The only data for 1975 we have available is for Broome, Dutchess, and Nassau counties, and each showed a decline in its drug case backlog during the first half of the year. By contrast, the New York City backlog was still growing substantially in the first half of 1975. Second, 1975 also saw a decline in the number (and proportion) of drug indictments in most of the counties. Third, the counties which faced the largest increases in their pending caseloads, Erie, Monroe, and Nassau, each had received a relatively large injection of new judicial resources. Erie grew from seven to ten judges; Monroe from four to seven; and Nassau from eight to twelve. It is likely, although we do not have data on the point, that these counties were able to manage an increase in their backlogs without attendant increases in the time cases must spend in the system. In other words, the resources newly furnished in these counties were sufficient to handle the increased workload. Evidence for this conclusion is that for all 53 counties outside the New York City metropolitan area, the age of cases disposed of did not increase during 1974, and the five counties examined here (Nassau is within the metropolitan area) account for 40% of the workload of all those counties.

Another similarity between the counties examined here is that class A felony drug cases accounted for a large part of the initial growth in backlogs. In Erie and Monroe counties, there was actually a decline in the backlog of non-class A cases. (This was also true in New York City.) Class A cases amounted to two-thirds of the backlog growth in Nassau County and nearly half of the growth in Dutchess County. In all these counties, these proportions are far higher than the share of class A cases in indictments (See Chart 7-A).

The demand for trials in drug cases has increased in several of the counties, as well as in New York City (see Chart 7-B). The data are not extensive enough for reliable statistical analysis, but 1974 and 1975 variations in trial rates between counties seem to be related to the prevalence of class A cases. (By comparison, Chart 7-C indicates that there has not been a general increase in the frequency of trials in non-drug cases in these counties since 1973.)

Once again, it appears that when the effects of the new laws are being examined, "new laws" is nearly synonymous with "class A cases." This, in turn, reinforces the finding

Chart 7A

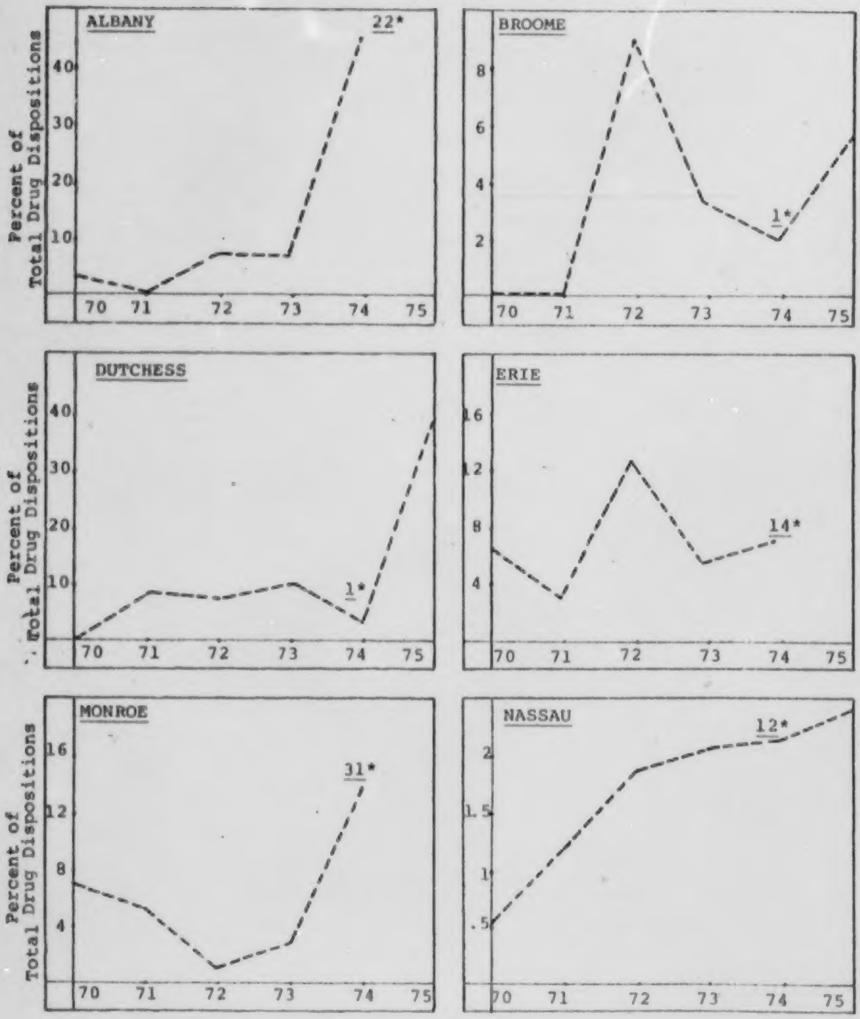


The Importance of Class A Felony Indictments

Source: New York State Division of Criminal Justice Services

CHART 7B

Trials in Drug Cases as a Percent of All Dispositions in Drug Cases

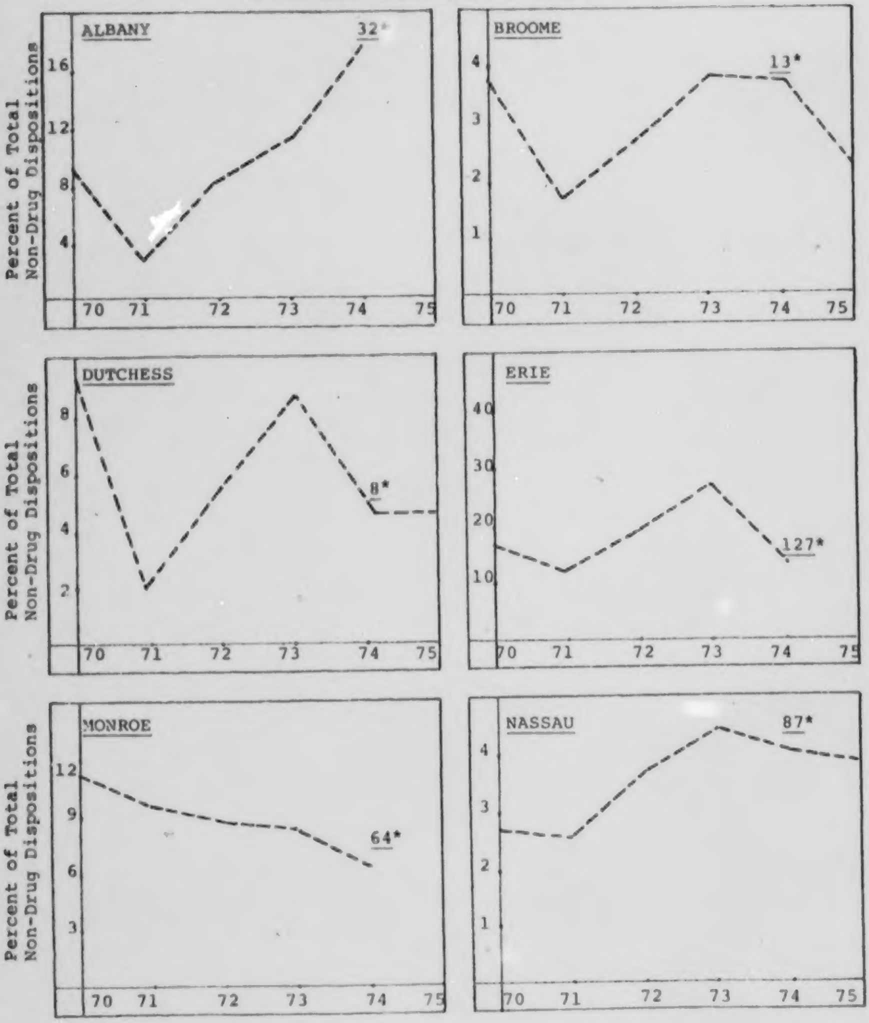


*Number of Trials

Source: New York State Division of Criminal Justice Services
Note: Large number of trials in Albany and Dutchess resulted from one-time State Police operations.

CHART 7C

Trials in Non-Drug Cases as a Percent of All Dispositions in these Cases



*Number of Trials

Source: New York State Division of Criminal Justice Services

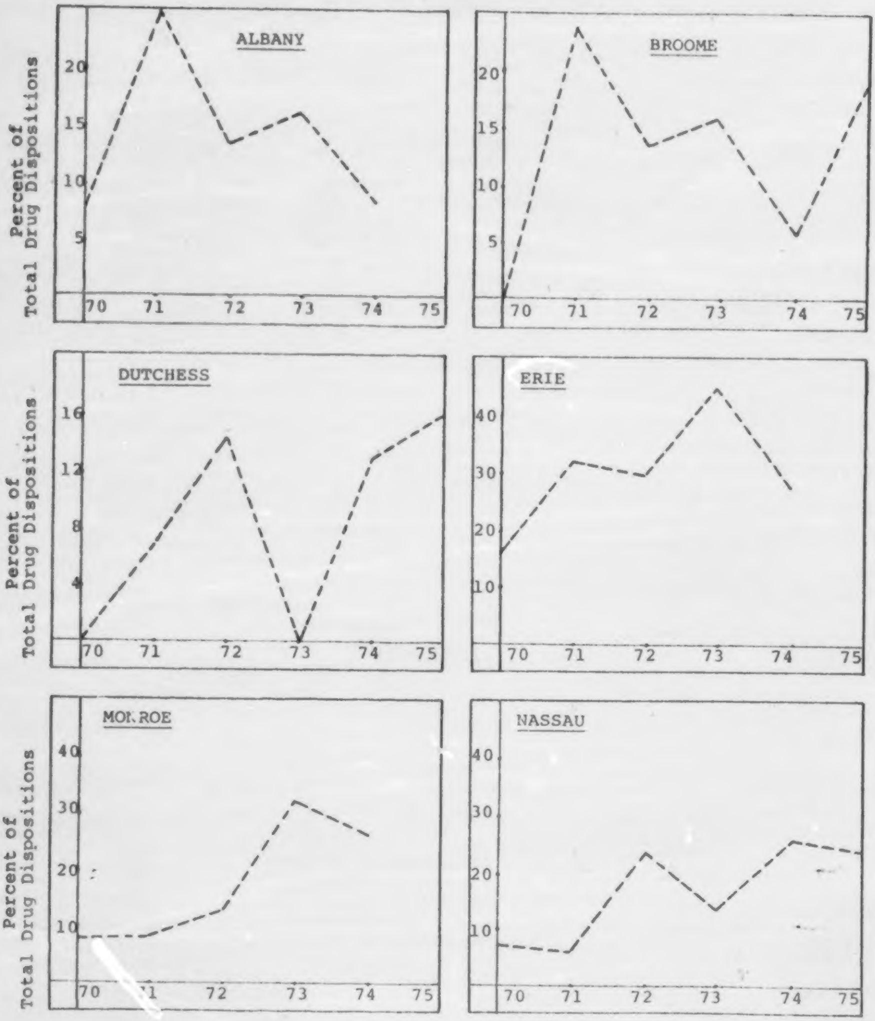
that the new laws are having an effect on the court system, because it is the class A cases which most clearly face the plea bargaining restrictions and mandatory sentencing provisions of the 1973 laws.

There are a variety of reasons for the slowness with which class A drug cases have been disposed. A high trial rate itself is, of course, of primary importance. But pleas in class A cases have also come slowly and, despite the high trial rate, most class A cases are resolved by a plea (within the new limitations on pleading). The reason may be the dynamics which apply to the class A plea process. Bargaining in these cases does not include the possibility of a non-jail sentence so that any plea will certainly involve incarceration for a minimum of one year and a lifetime maximum. If the defendant is free on bail, he will be reluctant to enter a plea until forced to a decision on whether to go to trial. This decision can be postponed by interposing motions, requesting adjournments, and finally insisting upon a trial and then entering a plea once the trial is ready to begin.

Some evidence to support this scenario is available. In Manhattan, for example, the number of appearances required on average to dispose of a drug case is 50% higher than average for non-drug cases. In New York City as a whole, the dismissal rate in drug cases has increased, which in turn suggests increased pre-trial hearing activity. (But dismissals have not increased markedly in the six upstate counties. See Chart 7-D). The assistant district attorney in Erie County in charge of drug prosecution has indicated that the decision to plead in A cases is usually not made by the defendant until a judge

CHART 7D

Dismissals in Drug Cases as a Percent of all Drug Dispositions



Source: New York State Division of Criminal Justice Services

is ready to begin his trial.

These possibilities add to the difficulties experienced by the courts in processing cases facing restrictions in plea bargaining and mandatory prison sentences. In most counties these restrictions do not affect a large enough number of cases (or portion of the courts' work) to be of major consequence. A brief review of the most relevant points for each county follows:

Albany County had the highest proportion of class A felony indictments among the non-New York City counties in our study. Although most of the indictments in 1973 grew out of a single State Police undercover operation which resulted in 23 arrests for A felonies late in the year, a steady flow of A felonies into the County court continues.

The 1973 arrests had a substantial impact on the courts during 1974. All but one of the defendants went to trial (about half were acquitted). This single operation raised the number of trials in drug cases from three in 1973 to 22 in 1974.

Despite the large increase in trials (the trial rate also increased in non-drug cases), there was no increase in Albany's pending drug caseload. The addition of a second County Court judge under the Drug Program was sufficient to cope with the volume of indictments, although because the new judge had just finished a term as District Attorney he did not sit in cases involving defendants he had indicted. Prior to the creation of the second judgeship, Albany's County Court Judge had been called upon to handle an extremely high workload (290 dispositions in 1973).

Broome County's only County Court Judge also had to deal with an exceptionally large number of indictments. The workload in Broome shows the steadiest increase among the counties we examined, with indictments growing from 208 in 1970 to an annual rate of over 500 during the first half of 1975. This workload is the highest per judge workload of the counties in our study.

Indictments for drug cases increased substantially in 1974, and the pending caseload increased as well. The trial rate in drug cases did not. Broome has historically had a very low trial rate, probably in large part because of a unique pre-trial conference procedure. The Probation Department prepares a pre-sentence report on defendants in time for an extensive pre-trial conference. The conference takes place in the judge's chambers, and is attended by the defense and prosecution. Extensive information exchange occurs, so that the outcome of a trial is reportedly more certain than under normal pre-trial procedures. In other circumstances, little verified information about the defendant is available, and free exchange of information is seldom the rule.

In 1974, there was only one trial in a drug felony case out of 53 drug dispositions. Broome has also had the lowest proportion of class A indictments among the six counties.

The increased backlog of 25 cases in 1974 was not of an unusual magnitude compared to past fluctuations in the County's caseload. During 1973, the pending caseload (of both drug and non-drug cases) had declined by about 50 cases. During 1972, the pending caseload had increased by that same amount. A year earlier, the pending caseload had decreased.

In terms of the normal fluctuations of workload in a busy one judge county, then, the 1974 activity was considered normal. In any case, by early 1975, the pending drug caseload had itself begun to decline.

Dutchess County is also characterized by a very low number of class A drug cases. There were only 13 class A indictments between September, 1973 and June, 1975. The increase in the drug case backlog amounted to only a dozen cases in 1974. Even that small increase was reduced in half early in 1975.

During 1974, the backlog of non-drug cases increased substantially because of a very large rise in arrests and indictments. Between September, 1974 and June, 1975, a County Court Judge who had been presiding in civil matters was pressed into criminal term service to manage this high level of activity. Of the class A cases which did result in trial, most were disposed of during the period when the second judge was available.

Erie County, despite its large size, does not generate more class A indictments than is typical for non-New York City counties across the State (about 25% of all drug indictments). Consequently, the trial rate in drug cases is not particularly high.

During 1974, however, there was a substantial increase in the number of drug indictments, and the drug backlog grew despite an increase in the number of drug dispositions and the addition of two court parts. (There was no change in the pending non-drug caseload.) Consistent with the pattern found in other counties, the entire drug backlog growth consisted of class A cases. During 1974, less than 10% of the class A indictments filed were disposed of.

There was a substantial increase in the number of drug trials during 1975, as the pending class A caseload matured. The assistant district attorney in charge of drug prosecution believes that the class A backlog continued to grow in 1975 despite the increased number of trials, the addition of a third new court part, and a reduction in the number of drug indictments. Reductions in the pending caseload of non-class A cases, however, has offset the increase in class A cases.

Monroe County has experienced the most serious rise in backlog of the six counties we examined. In 1974, there was significant backlog growth in both drug and non-drug cases due to a large increase in the number of indictments. Class A indictments accounted for about 34% of all drug indictments filed during 1974, and accounted for the entire growth in drug case backlog. Only about 30% of the class A drug cases filed through 1974 had been disposed by the end of that year. Most were trial dispositions, as class A cases went to trial at two and one-half to three times the rate experienced in the other counties (except Albany).

The addition of three court parts under the Emergency Dangerous Drug Control Program (to supplement the county's four regular judges) enabled the county to dispose of twice as many cases and to hold twice as many trials in 1974 as in 1973, and to keep the backlog from overwhelming the system.

The number of drug trials in the county increased from 3 in 1973 to 31 in 1974 and the number increased again in 1975, although the district attorney's office had indicated that a higher percentage of class A cases were disposed by plea in 1975. The county continued to experience class A backlog growth during 1975 despite a decrease in drug indictments.

Nassau County also suffered an increase in its pending caseload of drug felonies during 1974. While less than 20% of drug indictments were for class A felonies, these cases accounted for 2/3 of the backlog increase. Again, this pattern is consistent with developments in other counties.

In the first six months of 1975, backlogs of class A cases have continued to grow while the pending caseload of less serious drug cases (and of non-drug cases) have declined.

The rise in Nassau's class A backlog seems to be due to two peculiarities of the county's caseload rather than to an increase in the demand for trials which has been characteristic of other counties. One is the frequency with which the probation alternative for informants has been used. Fully 25% of all sentences in class A-III cases have come under this provision. The evaluation of information provided by informants has added time to the processing of class A cases generally, even where it does not result in a probation sentence.

Second, many A-III cases involving young offenders were held open until the Legislature resolved a question of applicability of the State's Youthful Offender (YO) provisions to class A felons. These statutes provide non-prison sentences for youths between the ages of 16 and 18. Before an amendment to the law in 1975, most judges believed the YO provisions did not apply in any class A case. Last year's amendment made the provisions applicable to class A-III offenders (but not to class A-I or A-II offenders). Nassau County officials have indicated that a substantial number of class A defendants are young, and that many of these cases were cleared in the second half of 1975 after the amendment became law.

Finally, Nassau has developed an extensive diversion program, Operation Midway, for defendants in both drug and non-drug felony cases. Under this program, a large number of cases are adjourned for periods of a year or more while defendants are under probationary supervision. Defendants in drug cases below the class A level are eligible for participation in Operation Midway. These cases show up in the data as pending, but they do not represent a burden for the court.

8

A CROSS-COUNTY COMPARISON OF COURT RESOURCES

To investigate whether or not the general congestion in New York City can be traced to an underallocation of court resources, we compared the workloads in the City courts with the workloads in the six other counties we examined. The comparison in this section deals with the entire workload of the courts -- both drug and other -- and with all resources available to the courts.

The general conclusion is that the City is not deprived of resources compared to other areas of the State.

With workload measured by the number of indictments for each judge there was a wide range of workloads in New York City and the upstate counties between 1972 and 1975 (see Table 8-I). Workloads varied by a factor of more than four to one, with a high of over 500 indictments per judge Broome County to a low of just over 100 indictments per judge in Albany County. Broome County's workload has been consistently among the highest. The workload of the New York City Courts has, by this crude measure, been somewhere in the middle since 1973. Judges made available under the Emergency Felony Case Program and the Special Narcotics Program in 1972 and 1973 served to significantly reduce the burden.

About half of the wide variation in workload can be explained statistically by differences in rates of trial between the counties. Broome County, a single judge county which has the highest workload, also has the lowest trial rate (consistently below four percent); Erie, with the lowest workload

TABLE 8-I

The Average Number of Indictments for Each Judge Varies Over a Wide Range

COUNTY	1972	1973	1974	Jan-June 1975
ALBANY	276	298	115	110
BROOME	352	371	432	532
DUTCHESS	260	153	230	169
ERIE	117	143	129	122
MONROE	186	174	204	263
NASSAU	378	345	238	274
NEW YORK CITY	370	245	179	192

TABLE 8-II

Dispositions by Trial As A Percent of Total Dispositions

COUNTY	1970	1971	1972	1973	1974	1975
ALBANY	7.1%	2.2%	7.7%	10.0%	23.3%	N.A.
BROOME	3.1	2.1	3.6	3.8	3.5	2.8%
DUTCHESS	8.0	3.7	5.6	8.6	3.8	10.1
ERIE	14.9	9.4	19.1	23.3	12.3	N.A.
MONROE	10.5	8.4	7.0	6.9	7.5	N.A.
NASSAU	2.1	2.2	3.2	3.9	4.6	3.7
NEW YORK CITY	3.0	5.6	6.0	6.6	9.0	11.1

TABLE 8-III

Misdemeanor Convictions As A Percent of All Superior Court Convictions

COUNTY	1970	1971	1972	1973	1974	Jan-June 1975
ALBANY	20.3%	13.9%	32.2%	25.1%	11.1%	N.A.
BROOME	14.1	8.7	22.1	16.0	17.2	15.0%
DUTCHESS	22.5	30.4	36.2	8.8	13.2	10.6
ERIE	20.1	26.3	24.1	22.7	32.2	N.A.
MONROE	19.2	22.0	38.7	30.5	35.3	N.A.
NASSAU	28.4	39.1	51.4	41.0	40.6	36.5
NEW YORK CITY	44.2	35.9	29.4	25.6	21.9	18.7

N.A. = Not available

Source for all Tables: New York State Division of Criminal Justice Services.

per part, has the highest trial rate (consistently above ten percent). It is reasonable that a county which continuously conducts a large number of trials should require relatively more resources than a county in which the demand for trials is low. New York City's trial rates tend to be higher than average but not greatly (See Table 8-II).

We also examined the possibility that the wide range among the counties in the number of indictments handled per judge is due to differences in the pattern of pre-indictment screening. In counties where screening is not well done, many of the convictions in superior court will be for misdemeanors rather than felonies. These counties could cope with a higher workload because the misdemeanor convictions are likely to be among the easier cases to dispose of.

We found no systematic relationship between misdemeanor convictions and per judge workload. Some interesting results were obtained, however, which might bear on other questions of performance. New York City has shown a steady and significant improvement in screening. In 1972, nearly 30% of Supreme Court convictions were for misdemeanors. Improvements in each year brought misdemeanors down below 20% of convictions in the first half of 1975 (See Table 8-III). Dutchess County has consistently done well since 1973, and Broome County has also done well in this respect. Nassau has done badly, but there is a definite trend toward improvement. Still, over a third of the county's convictions are for misdemeanors. The rates for Erie and Monroe counties fall between those for Nassau County and New York City.

The problems in the New York City courts are apparently not due to a shortage of resources in an absolute sense. Rather, the City's immense Supreme Court system presents management problems the dimensions of which are not approached in any other part of the State. The City's Supreme Courts (including the civil as well as the criminal branch -- both are under the same management) have an annual budget of $47 million and employ 1,800 people in ten different facilities in all five boroughs.

The development of a modern management apparatus, using tools applicable to the management of large and complex institutions, should be a high priority. Some of the problems faced by managers in the court system suggest a similarity to the problems of managing an airline: a high volume calendering system for a large number of courtrooms, analagous in some ways to an airlines reservation system; the management of extensive calendars in crowded courtrooms with the need to minimize waiting times, analagous to a traffic system at an airport; and the scheduling and physical movement of lawyers, witnesses, and documentation, analgous to assignment of flight crews and perhaps aircraft. A system of such complexity must be supported by techniques such as simulation and other operations research methods, which will require a significant investment.

The appointment of strong and knowledgeable administrative judges has put the City system in a position to be a responsive client for the initiatives of a bold management group.

Appendix I

Gaps in the Measurement of the Probability of Punishment

The probability of punishment (P) is the likelihood that a person committing a crime will be apprehended, convicted, and sentenced to prison for commission of the specific crime.

Let:

P_R = Probability of a crime being reported to the police

P_A = Probability that arrest will result from a reported crime

P_C = Probability that a person will be convicted in the courts after arrest

P_P = Probability that a person convicted of the crime will be sentenced to prison

The overall probability of punishment (P) is the product of these four probabilities:

$$P = (P_R)(P_A)(P_C)(P_P)$$

Similarly, interim probabilities can be obtained by multiplying together any sequential combination of these probabilities. For example, the probability of a defendant receiving a prison sentence after arrest ($P_{P/A}$) is:

$$P_{P/A} = (P_C)(P_P)$$

This Report focuses on the probability of prison sentence after arrest for drug and non-drug felonies separately, and isolates only those convictions and prison sentences that occurred in the superior court of the State, i.e. after an indictment has been returned. The limitation is necessary because of limitations in the availability of data.

First, data on processing felony arrests in the lower courts, i.e. prison to indictment, are presently unavailable for many areas of the State, including New York City. Although the likelihood of a defendant receiving a prison term after conviction in the lower courts is probably less than after conviction in the superior courts, the number of prison sentences issued in the lower courts may change the total number of prison sentences significantly, and thereby affect the probability of punishment.

The information that is required for calculating P_R is also generally unavailable. The Law Enforcement Assistance Administration began conducting surveys in 1973 which permit estimation of the rate at which all serious crimes that are reported to the police, but these data are now only available for New York City and Buffalo and only for one year. From the cross-jurisdictional data that is available, it appears that only about half of the serious crimes are reported to the police.

The data used in the calculation of $P_{P/A}$ were made available by the New York State Division of Criminal Justice Services (DCJS). The Project was given access to unpublished material collected by the Statistical Control Unit of DCJS for the years 1970 through 1974, and for 1975 where available.* The Statistical Control Unit receives monthly activity reports from each criminal justice agency in the State (police, district attorneys, lower courts, and superior courts). These reports consist of a cross-tabulation of the number of cases acted upon at a specific stage of the criminal justice process and the most serious charge facing the defendants at that time. Although yearly summaries of these data have been presented in various state and court publications, the data have not been used for analysis of activities in specific counties or of particular crimes.

A brief description of the data included in the calculation of the probability of punishment follows. In each case, the data were obtained for New York City and for six counties outside of New York City that were analyzed in this Report.

-- Arrests. The number of adults arrested in each of the counties for drug and non-drug felonies. Included are arrests made both by local and State police.

-- Indictments. The number of individuals indicted for drug and non-drug offenses, as reported by the district attorney in each of the counties. Each of the five New York City district attorneys reports separately to DCJS. The number of indictments serves as an indicator of the proportion of felony arrests that reach the superior courts, and conversely the proportion of felony arrests that are disposed of in the lower criminal courts.

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*The Statistical Control Unit was made part of DCJS on January 1, 1975. Before that date the unit was a division of the New York State Department of Correctional Services.

-- Superior Court Convictions. The number of individuals convicted of drug and non-drug offenses in each county was obtained from the report on dispositions submitted to DCJS by the chief superior court clerk of each county. Because these reports include the number of dispositions reached as a result of trials, pleas, and dismissals, they were also utilized in the sections of the report analyzing resources and workload of the superior court.

-- Prison Sentences. The number of prison sentences both to local and State prisons was obtained from the reports of sentences issued to defendants convicted in the superior courts. These reports are also submitted to DCJS by the chief superior court clerk of each county.

A perfectly accurate formulation of the probability of punishment would require the follow-up of individual crimes or arrests to see if an arrest was made for a specific known crime, and whether a conviction and prison sentence resulted. Given the present record-keeping systems in the counties, this is not a feasible approach. Instead, we have compared aggregate data from different stages of the process covering the same time periods. Most arrests occur a short time after a crime is committed, and a majority of the arrests are disposed well within a year of the time that the crime occurred. Only in circumstances in which the total number of arrests is small (as with the number of drug arrests in the smaller upstate counties) might the probability of punishment be seriously biased because the dispositions in one year might bear little relationship to crimes committed during that year.

Appendix II

Measuring Changes in the Pending Caseload of the New York City System Courts

Conflicting data from several public sources on indictments and dispositions in the City's courts make the measurement of workload and productivity difficult.

A brief description of the sources and types of data that are collected follows:

-- New York State Division of Criminal Justice Services Felony Indictment and Prosecution Report (Felony Processing).

Data covering indictments and dispositions are obtained from individual indictment and disposition forms submitted by each of the City's five district attorneys to DCJS. Half the form is submitted at the time of indictment, and half at completion of the case (sentence, acquittal, dismissal, etc.). DCJS issues the reports quarterly, beginning in December, 1973, and the only full year of data that is available is for 1974. Data on specific offenses are reported.

-- New York State Division of Criminal Justice Services: District Attorney Report on Grand Jury (Form C).

These reports consist of tabulations of actions taken by grand juries. The reporting form cross-references the type of offense with which the defendant is charged with the action taken by the grand jury (indictment, dismissal, returned to lower courts). Each district attorney submits the form each month to DCJS.

-- New York State Division of Criminal Justice Services: Outcome of Procedures in Supreme Court (Form D).

This report is identical in format to the "Form C" but substitutes the method of disposition (e.g. dispositions obtained as a result of trials, pleas, and dismissals) for the action of the grand jury. As in the Felony Processing Reports, dispositions are counted at the time of sentencing or other final action. The types of sentencing issued to convicted defendants (e.g. state and local prison terms, probation, and discharge) appear on an accompanying form (Form E). These forms are submitted each month to DCJS by the chief supreme court clerk in each borough. The disposition method is cross-referenced by the type of crime charged on the disposed indictment.

-- New York State Office of Court Administration, Court Information Service: Supreme Court (Criminal Branch) Statistical Summaries for New York City.

> These monthly reports cover indictments and dispositions occurring in each borough of New York City. Data are obtained from forms filed weekly by the clerk of each Supreme Court part with the New York State Office of Court Administration. No information on specific charges are available from these reports.

As indicated on Table III, there are significant differences between the activity represented in the three reports. The number of reported indictments and dispositions and the resulting change in backlog differ by as much as 5,000 cases for the same year. Thus, resolution of these differences was required before analysis could progress.

We found it impossible to reconcile the exact count of indictments and dispositions between sources. However, we were able to explain the direction of the differences, and in consultation with the New York State Office of Court Administration settle on a procedure that yields what we believe to be the best estimates of the number of drug indictments and dispositions.

We found that the Statistical Summaries issued by the New York State Office of Court Administration contained about 15% more dispositions than were reported on the Form D reports during the six-year period of 1970 through 1975, but only three percent more indictments than the district attorneys reported on Form C. As a result, the Statistical Summaries show considerably less of a backlog increase than the data on Form C and D (an increase of 10,417 cases over the six year period compared to 23,210 respectively). The change reported in the Statistical Summaries is considerably closer to the current backlog level than that derived from Forms C and D. The New York State Office of Court Administration reported that 12,038 cases were awaiting disposition in the Supreme Courts on January 4, 1976.

In large measure, the difference in reported dispositions can be accounted for by the varied reporting practices followed by the county clerks in the filing of the Form D report. The Statistical Summaries have maintained a consistent definition of the unit of count (the defendant-indictment), which maximizes the count of dispositions.* On the other hand, the definition of the unit of count varies from borough to borough, and may have changed over time. Some boroughs count only defendants (as is instructed on the form) while other boroughs count defendant-indictments.

Analysis of the data for 1975 revealed that about half the difference in reported dispositions during that year could be accounted for by the fact that one borough counted the number of defendants having their cases disposed of instead of the number of defendant-indictments.

The indictments and dispositions reported in the Statistical Summaries originate with the same source (the individual part clerks), while Form C is submitted by the county district attorney and Form D by the chief county court clerk. A major effort of the New York State Office of Court Administration and of the Office of the New York City Administrative Judge has been the establishment of clear reporting procedures for the production of the Statistical Summaries. Thus, we are confident in using data from the Statistical Summaries to represent the Supreme Court workload.

Unfortunately, neither the Statistical Summaries nor the raw data forms from which the summaries are created record the charge facing the defendant. To estimate the number of drug and non-drug indictments and dispositions, the proportion of actions accounted for by drug charges was calculated from the data on Forms C and D, and applied to the total number of indictments and dispositions reported in the Statistical Summaries. This procedure was adopted after discussions with analysts at the Office of Court Administration confirmed that while the absolute number of actions reported in Forms C and D may be far from accurate, there was no reason to expect that one type of case would be any more likely to be reported than another.

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*Under the definition of a defendant-indictment, one defendant listed in two different indictments and two defendants listed on one indictment both count as two defendant-indictments. If defendants were counted, then the first example would result in a count of one defendant, but the second would count as two defendants.

Table III

Comparison of Indictments and Dispositions

Reported in the New York City Supreme Courts

	Indictments	Dispositions	Change in Backlog
I. Forms C and D*	(Form C)	(Form D)	
1970	18,505	15,724	+ 2,781
1971	24,045	15,436	+ 8,609
1972	29,114	18,589	+10,525
1973	21,801	21,079	+ 722
1974	19,488	18,396	+ 1,092
1975	19,576	20,095	- 519
II. Statistical Summaries**			
1970	20,001	17,463	+2,538
1971	27,308	21,281	+6,027
1972	27,114	21,873	+5,241
1973	22,452	24,630	-2,172
1974	20,686	19,685	+1,001
1975	19,720	21,938	-2,218
II. Felony Processing			
1974	19,512	16,396	+3,116

*Although Form C originates with the District Attorney and Form D originates with the chief court clerk, both reports are governed by the same instructions and definitions. Because the number of indictments in 1975 are not available, arraignments reported on Form D are listed instead.

**Data for 1970 and 1971 were obtained from material published in the Judicial Conference annual reports. This is the same raw data that is now published in the Statistical Summaries.

Appendix III

Methodology for New York City Supreme Court Productivity Calculations

Let T_1, T_2 = percent of dispositions accounted for by trials in t1 and t2, etc. Subscripts can stand for either time periods or for groups of courts (parts).

P_1, P_2 = percent of dispositions accounted for by non-trial dispositions in t1 and t2, or for court groups 1 and 2.

P_1 = $1.00-T_1$, etc.

S_{T1}, S_{T2} = length of time in days it takes to dispose of a case by trial in t1, t2.

$$S_{TN} = \frac{\text{Total days on trial}}{\text{Total trial dispositions}}$$

S_{P1}, S_{P2} = length of time in days it takes to dispose of a non-trial case in t1, t2.

$$S_{PN} = \frac{\text{Total court days not on trial}}{\text{Total non-trial dispositions}}$$

S_1, S_2 = length of time in days it takes to dispose of any case in t1, t2.

S_1 = $T_1 S_{T1} + P_1 S_{P1}$

S_2 = $T_2 S_{T2} + P_2 S_{P2}$

Y_1, Y_2 = proportion of the year covered by t1, t2.

e.g. $Y_1 = 0.5$ if t1 is 6 months

Then X_1 = output per court day = $1/S_1$

X_2 = $1/S_2$

X can change because the mix of trials and other dispositions changes, or because the time it takes to dispose of a trial or other method changes, or both.

Assume no excess capacity in 1974

- 210 days/year/part

Several analyses can be performed with the data:

Calculate the change in the number of parts required to dispose of all indictments handed up during t2.

Assume T_1, P_1, S_{T1}, S_{P1}, i.e. trial mix and productivity doesn't change.

Let

C_2 = number of courtrooms (parts) required in t2

D_1 = number of dispositions in t1

I_2 = number of indictments in t2

C_{w2} = number of parts required to dispose of the indictments in time t2, given the trial rate and productivity of t1

ΔC_w = change in parts required because of workload changes alone; i.e. parts required to leave backlog which exists at the beginning of t2 unchanged

C_1 = actual number of parts in t1 = $D_1S_1/210/Y_1$

a. $C_{w2} = (I_2S_1/210)/Y_2$

b. $\Delta C_w = C_{w2}-C_1$

Calculate ΔC_T, the change in the number of parts required because of changes in the trial:non-trial mix alone.

Assume S_{T1}, S_{P1}, D_1

a. $S_{2.1} = T_2S_{T1} + P_2S_{P1}$ (the new trial:non-trial mix and the old times required to dispose of cases)

$S_{2.1}$ = length of time in days it would take to dispose of a case given productivity of t1 but trial mix of t2

b. $C_{T2} = D_1S_{2.1}/210/Y_2$

c. $\Delta C_T = C_{T2}-C_1$

Calculate ΔC_x, the change in the number of parts required because of changes in the time it takes to dispose of cases alone.

Assume T_1, P_1, D_1

a. $S_{1.2} = T_1S_{T2} + P_1S_{p2}$ (the new times required to dispose of cases and the old trial:non-trial mix)

$S_{1.2}$ = length of time in days it would take to dispose of a case given the trial mix of t1 but the productivity of t2.

b. $C_{x2} = D_1S_{1.2}/210/Y_2$

c. $\Delta C_x = C_{x2}-C_1$

4. Calculate C_2, the number of parts required in t2 as a result of all changes combined: workload, trial:non-trial mix, and time required to dispose of cases.

$$C_2 = C_1 + C_w + C_T + C_x$$

This calculation assumes independence between the time it takes to dispose of a case, case volume, and trial:non-trial mix.

Source of basic data: Off
of New York City Administr
Judge

4

SENTENCING PATTERNS UNDER THE 1973 NEW YORK STATE DRUG LAWS

A Staff Working Paper
of the
Drug Law Evaluation Project

This paper was prepared by Philip Richardson and Martin Heilweil.

October 1976

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INTRODUCTION

Comprehensive revisions of New York State's drug laws became effective on September 1, 1973. The new statutes reclassified many drug offenses as serious felonies, made prison terms mandatory upon conviction of many drug crimes, restricted plea bargaining by defendants indicted for certain drug felonies, and reinstituted recidivist sentencing provisions in New York State.*

The first section of this Staff Report presents data concerning statewide sentencing patterns for drug offenses between 1972 and mid-1976. Among the questions to be addressed in Section I are the following: Has there been a noticeable increase in the percentage of persons sentenced to prison following conviction of a drug offense? How many persons are being convicted and sentenced to prison for class A felonies? What has been the impact of the new plea bargaining restrictions on conviction and sentencing patterns in drug cases? Finally, has there been a significant increase in the length of prison terms imposed on drug offenders since the enactment of the new legislation?

Section II focuses on a description of persons who have actually been convicted and sentenced to prison under the new laws.**

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*Specific provisions of the 1973 legislation are listed in the Appendix to this volume.

*This Report supercedes the results reported previously in "Convictions and Sentences under the 1973 New York State Drug and Sentencing Laws: Drug Offenses," a Staff memorandum of the Drug Law Evaluation Project, December 1975

When the 1973 legislation was initially introduced, concern was expressed that the plea bargaining limitations and mandatory sentencing provisions would bear most heavily on younger offenders and on offenders with no prior criminal history. Under the old laws, judges and prosecutors frequently exercised discretion in favor of such offenders by providing non-prison sentences. The new laws, however, have curtailed the discretion of judges and district attorneys. Many drug defendants are no longer able to plead to a charge that will allow a non-prison sentence. Prison sentences have been made mandatory for many types of drug offenses, regardless of the age or prior record of the defendant. In order to throw light on these questions, this report examines data on the age distribution and prior arrest histories of persons sentenced to prison under the new laws.

Information regarding the types of drugs involved in cases which led to convictions and prison sentences is also presented. Under the new laws, mandatory prison terms and plea bargaining restrictions are prescribed not only for certain kinds of narcotic offenses, but also for many types of offenses which involve non-narcotic drugs such as hallucinogens and stimulants. Under the old laws, prison sentences were generally less likely to be imposed in cases involving non-narcotic drugs than in cases involving heroin or methadone. Critics of the new legislation have argued that the stricter penalties for drug offenses would probably have their greatest impact in cases involving drugs other than heroin.

Data and Method

Two types of data have been collected for this Report. Wherever possible, the Report relies upon official statistics for aggregate data regarding drug offenses and dispositions in New York State. Most of this data is made available by the New York State Division of Criminal Justice Services through its quarterly publication, New York State Felony Processing.

The Report also relies upon data collected independently by the Drug Law Evaluation Project. In order to answer many of the questions addressed by the Report, it became necessary to obtain far more specific information about drug offenses and drug offenders in New York State than was available from official statistics. Accordingly, the Project staff assembled a sample of approximately 1,600 drug cases which resulted in convictions in superior courts between 1972 and 1975 throughout New York State. This sample represented about 10% of all the drug felony indictments which resulted in convictions during this period. Detailed information about each of the sample cases was obtained from pre-sentence reports and other relevant documents.*

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*An outline of the sample design is contained in the Appendix to this paper.

SUMMARY OF FINDINGS

Substantial improvement was made during the first half of 1976 in processing cases under the 1973 drug law. Backlogs of new law cases in superior courts stabilized early in 1976 after increasing during 1974 and 1975. The number of Statewide prison sentences during 1974 and 1975 fell below sentences under the old drug laws, but early 1976 saw a significant increase in the number of prison sentences. Improved performance by the courts in processing class A felony cases was responsible for the increases.

-- The risk of imprisonment following a drug conviction rose from about 33% under the old law to 44% in 1975, and to 55% in early 1976.

-- A rise in the importance of class A convictions in New York City is primarily responsible for the rise in the risk of a prison term.

-- In 1975, nearly 20% of those convicted of class A felonies received non-prison sentences.

-- The recent amendment to the 1973 drug laws, which relaxes plea bargaining restrictions, promises to lead to a reduction in the existing backlog of class A cases. While the rate of imprisonment may not decline under the recent change, length of time served is certain to be reduced.

If performance of the court system under the new laws had matched old law standards, up to 4,200 prison sentences could have resulted compared to the 2,551 sentences actually imposed.

-- The increase in the likelihood of a prison sentence following conviction was more than offset by declines in the success with which convictions were obtained and in the ability of the courts to keep pace with new indictments.

Offenders convicted of class A felonies faced a higher risk of imprisonment than those convicted of similar offenses under the old law. Those convicted of less serious drug crimes, however, found their risk of imprisonment reduced. Thus, there has been an apparent reallocation of prison resources in favor of the more serious cases.

Offenders sentenced to prison under the 1973 laws are likely to spend more time institutionalized than offenders sentenced under the old laws.

- -- Available evidence strongly suggests that those sentenced for class A crimes will spend some more time in prison under the new laws. There is not likely to be a change in time served by those sentenced for non-class A offenses.

The plea bargaining restrictions imposed by the 1973 laws have been responsible for increasing the risk of a prison term in class A cases. However, the restrictions have not had a large effect in restricting bargaining where statute does not specifically apply.

- -- Between 75% and 80% of all indictments to A-I and A-II felonies are disposed of below the original indictment charge.
- -- Among class A-III convictions, there were substantially more long sentences imposed in cases which began as A-I indictments than as class A-II or A-III indictments. But the chances of receiving the lowest permissable sentence was the same for all three groups.
- -- There was no change from the old law in plea bargaining patterns for cases below the class A felony level.
- -- The benefits of accepting a plea in class A-III cases instead of going to trial were evident outside New York City, where chances of receiving the lowest

permissable sentence were twice as high for those who plead as for those who were convicted by trial. There was no comparable "cost" of going to trial for defendants in New York City.

Surprisingly little difference in offender characteristics was discovered between old law and new law cases.

-- Well over one half the offenders sentenced under both sets of laws had previous felony arrests.

-- The likelihood of receiving a prison term increased for all offenders, regardless of age, prior arrest record, or type of drug involved in the case. As would be expected, the risk of prison increased most for first offenders (particularly in New York City), but it did not increase for the young. Apparently, the extension of the Youthful Offender provisions to class A-III offenders in 1975 blunted whatever tendency there may have been to sentence 16-18 year olds to prison.

-- There was some difference between the old and new law in the quantity of heroin involved in cases which led to prison sentences. Roughly 60% of both old and new law cases involved less than 1/8 ounce of heroin, but the share of cases involving over 1 ounce of heroin nearly doubled under the new laws (from 13% to 22%).

I

PATTERNS OF CONVICTIONS AND SENTENCES FOR DRUG OFFENSES

A. STATEWIDE TRENDS IN DRUG CONVICTIONS AND SENTENCES

During 1974 and 1975, the first complete years in which the new laws were in operation, the number of prison sentences imposed following conviction of a drug offense in New York State superior courts fell below the 1972 and 1973 levels (see Table I).* In 1974, the number of prison sentences for drug offenses fell 30% from 1973 levels. In 1975, the number of prison sentences rose substantially, but still remained below the 1973 levels. Further increases were recorded during the first half of 1976.

The reasons for the decline in prison sentences for drug offenses since 1972 have been reported on elsewhere and are the subject of continuing analysis by the Project.** Briefly, the decline in the number of prison sentences appears to be the result of a sharp decline in the number of drug convictions (a 35% drop between 1973 and 1974). The decline in the number of drug convictions, in turn, seems to be the outcome of the following factors: a decline in the number of felony drug arrests and indictments (because the courts were still working on 1972 cases during 1973), the failure

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*In this report, "prison sentences" include sentences to both State correctional institutions and to local jails, unless otherwise indicated.

**"The Effects of the 1973 Drug Laws on the New York State Courts," Staff Working Papers, No. 3.

TABLE I

ALL DRUG CASES IN NEW YORK STATE, 1972-1976*

	1972	1973	1974	1975	Jan-June 1976
Felony Arrests	19,269	15,594	17,654	15,523	8,166
Indictments	7,528	5,969	5,581	4,276	2,073
Dispositions	6,991	5,580	3,815	3,957	2,173
Convictions	6,033	4,739	3,085	3,147	1,724
Prison Sentences	2,039	1,555	1,074	1,369	945
(As a percentage of convictions)	33.8%	32.8%	34.8%	43.5%	54.8%

*Notes and definitions for this table are presented on the following page.

NOTES AND DEFINITIONS FOR TABLE I

Felony arrests refer to the number of persons arrested who faced a drug charge as the most serious charge.

Indictments, dispositions, convictions, and prison sentences prior to 9/1/73 refer to defendants. Figures after 9/1/73 refer to defendant-indictments. When defendant-indictment is used as the unit of count, a defendant who is indicted in two separate indictments is counted as two indicted defendants. Figures for drug dispositions and convictions during 1973 are not available from the Felony Processing Reports. These figures are estimates by the Project.

Indictments and dispositions refer only to cases disposed of on merit. They do not include indictments disposed of by consolidation or on other non-merit grounds. Those disposed of by consolidation were estimated by the Project for 1974, 1975, and 1976.

Convictions refer to convictions on drug charges only. They do not include convictions on non-drug charges following a drug felony indictment.

Prison sentences refer to sentences imposed after conviction on drug charges. They include both State and local prison sentences.

of the courts to dispose of new law drug cases at a rate comparable to old law dispositions, and a decline in the risk of conviction following indictments for drug crimes, a decline due principally to an increase in dismissed cases. These factors have been offset to some extent by a substantial rise in the risk of going to prison once a conviction is obtained.

The proportion of persons sent to prison following conviction for a drug offense in 1974 (34.8%) remained roughly consistent with 1972 and 1973 levels. In 1975, this proportion rose to 43.5%. During the first six months of 1976, the risk of imprisonment rose further to 54.8% so that in mid-1976 the likelihood of going to prison after being convicted of a drug offense was 50% greater than it was under the old drug laws.

Because of the recent amendment to the 1973 drug laws, the half-year data for 1976 do not provide a reliable basis for estimating the full year's results. In July 1976, some of the plea bargaining restrictions of the 1973 legislation were abandoned and defendants indicted on class A-III felonies can now plead to a charge below the class A level. This amendment can be expected to have a significant effect on the length of prison terms, though perhaps not on the proportion of convicted drug defendants sentenced to prison.

Disposing of Class A Felony Cases

The figures in Table I reveal that there was no appreciable increase in the percentage of persons sentenced to prison for drug offenses during 1974. The slowness to respond to the mandatory prison provisions can be traced primarily to the courts' lack of success in disposing of new law class A indictments -- cases which, with a few exceptions, result in automatic prison terms on conviction. Table II, for example, indicates that while class A cases accounted for approximately one-half of all new law drug indictments during 1974 (3,007), they comprised fewer than one-third (620) of all new law dispositions and less than one quarter (322) of all new law convictions.

Class A felony cases were disposed of at a much improved rate during 1975: new law class A dispositions rose from 620 in 1974 to 1,735 and accounted for 44% of all new law drug dispositions last year. In 1975, approximately 37% of all new law convictions were convictions for class A felonies.

The increase in the number of class A drug dispositions was the primary factor in the overall increase in the prison rate* for drug offenders in 1975. In 1974, about 92% of persons convicted of class A felonies were sentenced to prison (see Table III). But, because of

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* The "prison rate" is defined as the percentage of convicted drug defendants sentenced to prison.

TABLE II

THE FLOW OF NEW LAW DRUG CASES IN SUPERIOR COURTS, BY CLASS OF FELONY

	Class A Felony Cases			Other New Law Cases			Total New Law Cases		
	1974	1975	Jan-Jun 1976	1974	1975	Jan-Jun 1976	1974	1975	Jan-Jun. 1976
Indictments	3,007	2,682	1,333	2,955	2,201	1,011	5,962	4,883	2,344
Dispositions	620	1,735	1,320	1,373	2,184	1,033	1,993	3,919	2,353
Convictions*	322	1,005	803	1,098	1,736	838	1,420	2,741	1,641
Prison Sentences	296	798	683	206***	366***	202***	502	1,164	885

Note: Differences between Table I and Table II are accounted for by old law (pre-1973 law) drug cases, which are included in Table I but not here.

*Conviction charge

**Includes sentences to both State and local prisons.

***The figures for prison sentences in non-A cases are based on a) known prison sentences for B,C,D, and E felony convictions, plus b) an estimate based upon the sample data of the number of prison sentences imposed for A misdemeanor convictions.

Source: New York State Division of Criminal Justice Services.

TABLE III

PRISON SENTENCES IMPOSED ON PERSONS CONVICTED OF DRUG OFFENSES, NEW YORK STATE

	Total Convictions	Total Prison Sentences*	Percent Receiving Prison Sentences
Old Law Convictions			
1972	6,033	2,039	33.8%
1973	4,739	1,555	32.8%
1974	1,665	572	34.4%
New Law Convictions			
1974 Total	1,420	502	35.4%
Class A	322	296	92.0%
Non-A	1,098	206	18.8%
1975 Total	2,741	1,164	42.5%
Class A	1,005	798	79.4%
Non-A	1,736	366	21.1%
1976 (Jan.-Jun.)			
Total	1,641	885	53.9%
Class A	803	683	85.1%
Non-A	838	202	24.1%

*Prison sentences for new law non-A convictions are based on; a) known prison sentences for class B, C, D, and E felonies, plus b) an estimate (based upon sample data) of the number of prison sentences imposed for A-misdemeanor convictions.

Source: New York State Division of Criminal Justice Services.

the small number of class A cases disposed of, the number of prison sentences for class A convictions remained small (296) and had little effect on the overall number of prison sentences imposed. In 1974, in fact, prison sentences for class A convictions accounted for only 28% of all prison terms imposed on drug offenders.

The increase in the number of prison sentences from 1,074 in 1974 to 1,369 in 1975 was accounted for solely by the increase in the number of prison terms imposed in class A cases (from 296 in 1974 to 798 in 1975). In 1975, prison sentences for class A convictions accounted for almost 80% of all new law prison sentences. Even with this increase, it was not until 1976 that class A cases were disposed of in numbers large enough to match class A indictments. Through 1974 and 1975, therefore, the courts' backlog of class A cases rose.

The lag in the disposition of class A cases during 1974 and 1975 appears to be the result of an increased demand for trials among class A felony defendants, a situation which seems to be a direct result of the new plea bargaining restrictions.* In the first six months of 1976, however, substantial progress was made in stabilizing the backlog of class A cases. Table II indicates that the number of class A indictments disposed of in the first half of 1976 (1,320) almost matched the number of new class A indictments (1,333). The backlog of new law cases below the class A level was also significantly reduced. As a result of these changes, there were proportionally almost as many dispositions of class A cases in the first six months of 1976 as there were indictments.

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*See discussion in "The Effects of the 1973 Drug Laws on the New York State Courts," Staff Working Papers, No. 3.

Indications from judges and prosecutors are that backlogs of class A cases are currently being reduced quickly by resorting to the more lenient plea bargaining provisions of the 1976 amendment. Under this recent change, defendants indicted for class A-III felonies can plead to class C felonies and may be sentenced to local jails for definite periods not exceeding one year.

Non-Prison Sentences in class A Cases

The fact that the chances of being sentenced to prison for drug offenses rose to only 43.5% in 1975 can be accounted for partly by the continued backlog of class A cases. At least two other factors account for the relatively slight increase in the prison rate in 1975. One is that some of the class A indictments which were disposed of were disposed of below the class A level -- and so were not subject to mandatory prison terms -- or resulted in dismissals. Only 58% of all class A indictments disposed of during 1975 resulted in actual class A convictions.

Another reason for the relatively small increase in the 1975 prison rate during 1975 was the low imprisonment rate for class A offenses, only 79% compared to 92% in 1974. Table IV presents data on the types of sentences imposed on defendants convicted of class A felonies in 1975. About 19% of defendants convicted of class A felonies were placed on probation (17.7% in New York City and 21.5% in the rest of the State). In 1974, in contrast, only 7.5% of convicted class A defendants received probationary terms (5.4% in New York City and 12% in the rest of the State).

TABLE IV

SENTENCES FOR CLASS A CONVICTIONS, 1975

	Total Convictions	Prison Sentences	Probation Sentences	Other
New York City	694 (100%)	554 (79.8%)	123 (17.7%)	17 (2.4%)
Rest of State	311 (100)	244 (78.5)	67 (21.5)	0 (0.0)
Total	1,005 (100%)	798 (79.4%)	190 (18.9%)	17 (1.7%)

Source: New York State Division of Criminal Justice Services.

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Under the 1973 legislation, lifetime probation terms can be granted to defendants convicted of class A felonies if they provide information considered useful to the prosecutor. In addition, an amendment to the laws made in 1975 extended Youthful Offender treatment to 16-18 year old defendants convicted of class A-III offenses.* This amendment means that convicted class A-III defendants within the 16-18 year age group can now be granted probation, regardless of the informant requirements. Since A-III convictions accounted for 84% (843) of all class A convictions in 1975, the extension of Youthful Offender treatment to convicted A-III defendants was an important factor in the decline in the prison rate for class A offenses.

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*Youthful Offender status permits a sentence to probation for 16-18 year olds, and does not result in an official "record of criminal conviction." It is not available for 16-18 year olds indicted for class A-I or A-II felonies.

Granting Youthful Offender probation sentences also appears to have had an impact on the overall age distribution of defendants sentenced to prison under the new laws. Of all 16-18 year old defendants convicted of class A drug felonies in 1975, for example, only about one quarter received prison terms. In 1974, the comparable figure was almost 70% (see Section II).

In the first half of 1976, the imprisonment rate in class A cases increased to 85%, but still remained below the 1974 level. Probation sentences were imposed on about 14% of all persons convicted of class A offenses. In New York City, about 11% of all defendants convicted of class A felonies received probation. In the rest of the State, about 14% of defendants convicted of class A offenses were granted probation terms.

Projection of Old Law Patterns to New Law Cases

Sentencing patterns under the new laws have been influenced by three factors -- disposition rates, conviction rates, and imprisonment rates. One way of roughly gauging the separate impact of each of these factors is to estimate the number of prison sentences that would have resulted if the old law rates had prevailed under the new legislation. The appropriate factors are listed in Table V.

For example, if all three 1972 rates had been maintained under the new laws, a total of 3,233 prison sentences would have resulted from the 11,930 new law indictments disposed of on their merits, compared to the 2,551 prison sentences which actually occurred.

The role of changes in each of the factors can also be

TABLE V

DISPOSITION RATES, CONVICTION RATES, AND IMPRISONMENT RATES UNDER THE OLD AND NEW LAWS

	Old Law 1972	New Law 1974-June 1976
Ratio of Dispositions to Indictments: "Disposition Rate"*	92.9%	62.7%
Ratio of Convictions to Dispositions: "Conviction Rate"**	86.3%	80.2%
Ratio of Prison Sentences to Convictions: "Imprisonment Rate"	33.8%	44.0%
Number of Indictments	7,528	11,930
Number of Prison Sentences	2,039	2,551

* Refers to the number of dispositions in a given year divided by the number of indictments.

** The conviction rates are derived from the figures for dispositions and convictions in Table I. The figures for dispositions in Table I refer only to indictments which were disposed of on merit and do not include indictments disposed of by consolidation or by plea to another indictment.

Other estimates of the conviction rate are possible. If indictments disposed of by consolidation are counted as dismissals, for example, a much lower conviction rate will result. Prosecutors, however, do not usually count consolidations as dismissals when estimating the conviction rate. We believe, therefore, that our use of the term "conviction rate" conforms most closely to common practice.

Available figures for dispositions during 1972 do not include indictments disposed of by consolidation. Figures for 1974, 1975 and 1976, however, refer to total dispositions, including consolidated indictments. Available data, therefore, did not permit a direct comparison between total dispositions in old and new law years. In Table I, the figures for dispositions in 1974, 1975 and 1976 are estimates calculated to exclude indictments disposed of by consolidation.

The conviction rate in Table V refers only to convictions on drug charges. In a small number of cases, a defendant may be indicted on a drug and non-drug charge but convicted only of the non-drug charge. These are counted as drug dispositions but not as convictions in calculating the conviction rate.

estimated. For example, the effect of the lower disposition rate can be gauged by applying the old law disposition rate (92.9%) to actual new law indictments. A total of 3,911 prison sentences would have resulted, or 1,360 more than the actual number of prison sentences under the new laws.

The effect of the lower conviction rate can be measured by applying the old law conviction rate (86.3%) to actual new law dispositions. A total of 2,840 prison sentences would have resulted, or 289 more than the actual number under the new laws.

The effect of both the lower disposition rate and the lower conviction rate can be assessed by applying both these rates to actual new law indictments. A total of 4,208 prison sentences would have resulted, or 2,102 more than the actual number imposed.

Finally, the impact of the increased imprisonment rate can be gauged by applying the old law imprisonment rate to the actual number of new law convictions. Only 2,038 prison terms would have resulted, or 513 fewer than the actual number. Thus, the increase in the imprisonment rate was not great enough to offset the combined declines in the conviction rate and disposition rate.

Another means of assessing impact of the new laws on sentencing patterns is to reclassify old law drug cases according to the charges that would apply under the new legislation. Sentence outcomes in these cases can then be compared to actual sentence outcomes in equivalent new law cases. In order to accomplish this reclassification, information was recorded on the conviction charge and on the type and weight of drug involved in each of the sample's old law cases. On the basis of this information, all of the old law cases were recategorized into two groups: cases which would constitute class A felonies under the new laws and cases which would constitute non-A felonies under the new laws.

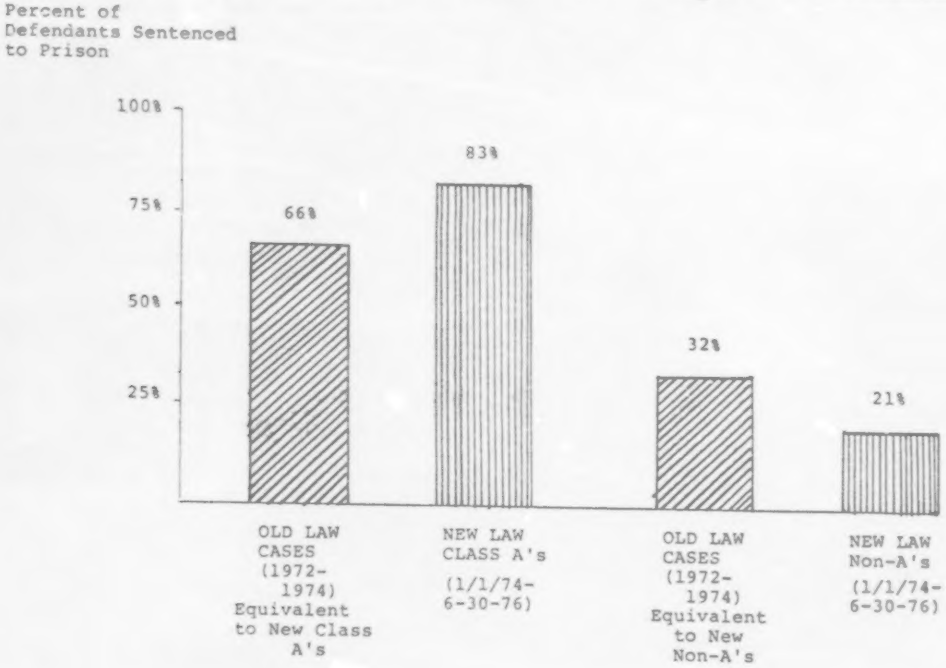
Chart I compares the percentage of defendants receiving prison terms in these two groups of cases with the percentage receiving prison terms on conviction of class A and non-class A offenses under the new laws. Of all old law defendants convicted of offenses which would constitute class A felonies under the new laws, about two-thirds (66%) were sentenced to prison. In contrast, approximately 83% of defendants convicted of class A felonies under the new laws during 1974, 1975 and the first half of 1976 received terms of imprisonment.

The figures for new law non-A convictions and for old law offenses equivalent to new law non-A cases, however, reveal a contrasting trend. About one-third (32%) of persons convicted of old law offenses which would now constitute non-class A felonies were sentenced to prison, but under the new laws only 20% of the defendants convicted of non-A felonies received prison terms.

These findings suggest that the 1973 amendments to the drug laws have had two distinct results, which depend on the specific categorization of drug crimes in the statute. First, the imprisonment rate for the offenses reclassified upwards as A felonies has increased over old law levels,

CHART I

PERCENT OF DEFENDANTS SENTENCED TO PRISON FOLLOWING CONVICTION OF DRUG OFFENSES, NEW YORK STATE



Source: Drug Law Evaluation Project Survey

because of the new mandatory sentencing provisions. Secondly, the imprisonment rate for offenses not reclassified as A felonies has declined from the old law levels.

This finding suggests that the allocation of prison resources can be changed to some extent from less serious to more serious crimes through specific provisions of the law.

New York City and the Rest of the State Compared

Table VI presents figures on new law drug convictions and prison sentences in New York City and the rest of the State. The majority of new law class A convictions (66.5%) occur in New York City. The figures also reveal that, in New York City, class A cases accounted for 61% of all new law convictions. In the rest of the State, however, class A cases constituted only 21% of all new law convictions during these years.

Differences in the importance of class A cases have resulted in a large difference in the proportion of offenders sentenced to prison in New York City and other areas. In New York City, about 59% of all defendants convicted of new law drug offenses during 1974, 1975 and the first half of 1976, were sentenced to prison, compared to only 33% in the rest of the State. If the 1973 laws had remained intact long enough to have reduced the backlog of class A cases, it is likely that the prison rate for New York City would eventually have increased to almost 70%, while the prison rate for the rest of the State would have

TABLE VI

NEW LAW CONVICTIONS AND PRISON SENTENCES IN NEW YORK CITY AND THE REST OF THE STATE

	1974		1975		June-Jan. 1976	
	Class A	Non-A*	Class A	Non-A*	Class A	Non-A
New York City						
Convictions	222	249	694	430	501	238
Prison Sentences	208	38	554	91	439	72
Rest of State						
Convictions	100	849	311	1,305	302	600
Prison Sentences	88	168	244	275	244	130

*Figures for non-A convictions and prison sentences are estimates based in part on Felony Processing Report data and in part on the Project's sample data.

Source: Division of Criminal Justice Services.

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gone up to 41%. Under the old laws, in contrast, about 42% of all convicted drug defendants in New York City were sentenced to prison, compared to 32% in the rest of the State.*

The contrasts between New York City and the rest of the State are also evident in an analysis of prison rates in old law cases which have been recategorized into their new equivalents. In New York City, 80.6% of old law defendants convicted of offenses which would now be class A felonies were sentenced to prison compared to 84.7% of defendants actually convicted of class A felonies under the new laws. Of all old law defendants convicted of offenses equivalent to new law charges below the class A level, 39.5% received prison terms, compared to 21.9% of defendants actually convicted of new law non-A offenses. In the rest of the State, the prison rate in old law cases which would now be class A felonies was 53.1%, while under the new laws, 80.8% of defendants convicted of class A felonies were sentenced to prison.

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*Drug Law Evaluation Project Survey.

In New York City, therefore, there has been only a slight increase in the prison rate for new law class A offenders compared to the prison rate for old law defendants convicted of equivalent offenses.

These results apparently conflict with the finding that there has been a greater rise in the likelihood of prison in New York City than elsewhere. The fact that class A cases have increased their relative importance in New York City explains the apparent difference. Under the old laws, offenses equivalent to new law class A felonies comprised fewer than one-sixth of all drug convictions, while under the new laws, class A felonies account for 67% of all convictions. The increase in the proportion of class A convictions appears in part to be the result of the plea bargaining restrictions imposed by the 1973 laws and perhaps also in part the result of changes in police policies in New York City which have led to a greater concentration on upper and middle level drug arrests.

TABLE VII

PERCENT OF OFFENDERS SENTENCED TO PRISON FOLLOWING CONVICTIONS ON DRUG CHARGES, BY CONVICTION CHARGE

NEW YORK CITY

	Class A Felony*		Non-Class A Felony**	
	1972-74 Old Law (Equivalent to New Law)	1974-75 New Law	1972-74 Old Law (Equivalent to New Law)	1974-75 New Law
Prison	80.6%	85.3%	39.5%	21.4%
Non-Prison	19.4	14.7	60.5	78.6
Total	100.0%	100.0%	100.0%	100.0%
Number of Sentences	(539)	(916)	(1,716)	(679)

REST OF STATE

	Class A Felony**		Non-Class A Felony**	
	1972-74 Old Law (Eqivalent to New Law)	1974-75 New Law	1972-74 Old Law (Eqivalent to New Law)	1974-75 New Law
Prison	53.1%	79.3%	26.2%	19.2%
Non-Prison	46.9	20.7	73.8	80.0
Total	100.0%	100.0%	100.0%	100.0%
Number of Sentences	(390)	(411)	(1,521)	(2,154)

Notes: Text includes 1976 data. Table goes through 1975.

* Indicates differences between old and new law not statistically significant.

**Indicates differences between old and new law are statistically significant, p less than .05.

Sources: Drug Law Evaluation Project Survey for Old Law Reclassification: New York State Division of Criminal Justices Services for New Law.

B. SEVERITY OF SENTENCES

It is highly likely that offenders sentenced to State Prison under the new drug laws will spend longer periods of time incarcerated than did offenders sentenced under the old laws. However, because such a short time has elapsed since the first offender was sentenced, and because of the long period of indeterminacy governing New York State sentences -- as long as one year to life for those sentenced under class A-III felony provisions -- it will be some time before accurate estimates of actual time served can be developed.

Under the old drug laws, when there were very few class A prosecutions -- class A felonies under the old laws required sale or possession of one pound of heroin -- minimum terms of imprisonment were typically set by the New York State Board of Parole. At the time of sentencing, judges in non-class A cases set maximum terms of imprisonment only. We know of no data regarding actual time spent in prison under the old laws except for the annual information published by the New York State Department of Correctional Services. That data shows that the median time spent in prison by those released on parole varied between eighteen and twenty-one months between 1970 and 1974. Officials knowledgeable about the parole system have informed us that on the average inmates spend one third of the maximum term determined originally by the judge.

Under the new laws, sentencing practices differ significantly because now there are many class A cases. For class

A felons the judge must specify a minimum term of incarceration. A lifetime maximum obtains for all class A felons. Clearly, the maximum term is no longer relevant as a gauge of time spent in prison. The Parole Board currently reviews class A cases as their minimums approach to determine whether the offender should be released, or, if not, how long the offender should spend in prison. Data made available to us by the New York State Department of Correctional Services indicate, for example, that of all those offenders sentenced to one year to life terms under the A-III provisions and who were eligible for parole during 1974 or 1975, approximately one-third were actually released after their minimum terms had been served. Not enough time has elapsed since other offenders have gone to prison to determine how long they will actually spend incarcerated.

In order to make some estimates of the effect of the new laws on time served, Table VIII compares maximum terms of imprisonment for class A equivalent cases under the old law with minimum terms of imprisonment in class A new law cases. Under the old law, prisoners could expect to spend one-third of their maximum terms in prison. The Table shows that 64% of old law offenders could expect to serve terms of two years or less. There is a distribution around the two-year mark which is unknown to us. Under the new laws an almost identical 58% of sentences carried a minimum period of two years or less.

It is hazardous to project actual time spent in prison by these 58% of new law class A offenders. As noted, approximately

TABLE VIII

LENGTH OF PRISON TERMS FOLLOWING CLASS A FELONY DRUG CONVICTIONS, STATEWIDE

	Old Law (1972-1974) Equivalent To New Law 1/3 Maximum	New Law (1974-1975) Actual Minimum
Local Jail		
Up to 1 year, actual term	10.0%	N.A.
State Prison		
1 year	14.1	46.1
1 year to 2 years	40.3	11.6
Greater then 2 years	35.6	42.3
Total	100.0%	100.0%*
Number of Sentences	(929)	(1,094)

*Differences between old law and new law distributions are statistically significant (X^2=114, p less than .05).

N.A. Local jail sentence is not permissible under the 1973 law.

Source: Drug Law Evaluation Project Survey.

one-third of all those offenders sentenced for terms of one year to life and eligible for parole during 1974 and 1975 were actually released on parole. Thus two-thirds of those offenders sentenced for one year to life will spend more than their minimum terms in prison. It is a fair assumption, then, that on average offenders sentenced to prison under the new class A provisions will spend more time incarcerated than did their counterparts under the old law.

Table IX compares maximum periods of imprisonment for those sentenced under the non-class A provisions of the new law with their equivalent numbers under the old law. The distributions are very similar. A slightly higher proportion of sentences are now to State prison for indeterminate periods.

For most State prison sentences, minimum terms of imprisonment are not established by the court for cases below the class A level, so that comparison of the maximum terms (or one-third of the maximum terms) for both old and new law cases is appropriate. The similarity in sentence lengths under the old and new laws for non-A cases is striking. Under both laws between 45% and 50% of all State prison terms carried a maximum of three years. Thus, in non-A cases, where the rate of imprisonment has not increased under the new laws, neither is the length of time served likely to increase substantially.

The net result of these comparisons seems to be that the offenders sentenced under the new law who would not also have been sentenced previously were generally sentenced to short periods of imprisonment. Thus, given the number of convic-

TABLE IX

NON-CLASS A DRUG CONVICTIONS: LENGTH OF PRISON SENTENCES (LOCAL JAIL AND STATE PRISON), STATEWIDE PERCENT DISTRIBUTION

	1972-1974 Old Law (Non Class A (Equivalents)	1974-1975 New Law Non-Class A
Local Jail (up to 1 year, actual term)	54.2%	46.8%
State Prison, Maximum term*		
3 years	22.0	24.5
4-5 years	18.8	19.5
over 5 years	5.0	9.2
Total	100.0%**	100.0%**
Number of prison sentences	(3,237)	(572)

* There are no permissible sentences carrying maximums of less than 3 years.

**Differences between old and new law are statistically significant ($X^2=6.93$, p less than .05).

Source: Drug Law Evaluation Project Survey.

tions actually obtained under the new laws, the number of offenders sentenced to prison has gone up somewhat and the terms of imprisonment cluster around the minimum terms allowed by the new laws.

C. IMPACT OF THE PLEA BARGAINING RESTRICTIONS

The primary objective of the plea bargaining provisions of the 1973 laws was to ensure that defendants indicted for class A drug felonies could not plea bargain to a charge below the class A level and thereby avoid a sentence to prison. This section examines two aspects of the new plea bargaining limitations: first, their impact on the scope of charge reduction and on the length of prison sentences imposed under the new laws; second, their impact on the prison rate.

Table X presents figures on indictments, dispositions and convictions in class A drug cases during 1974, 1975 and the first half of 1976. Among class A cases, extensive charge reduction occurred during the process from indictment to conviction. While class A-I and A-II indictments, for example, accounted for over 53% of all class A indictments during this period, class A-I and A-II convictions comprised fewer than 16% of all class A convictions.

The backlog in class A-I and A-II cases had been substantially eliminated by the middle of 1976. Statistics on acquittal and dismissal rates reveal no significant difference between class A-I, A-II and A-III dispositions (19%, 20% and 16% respectively). This pattern suggests that while the new laws have prohibited plea bargaining from the class A

TABLE X

NUMBER OF INDICTMENTS, DISPOSITIONS AND CONVICTIONS IN CLASS A-I, A-II AND A-III FELONIES (1974-JUNE, 1976), NEW YORK STATE

	A-I			A-II			A-III		
	1974	1975	Jan-June 1976	1974	1975	Jan-June 1976	1974	1975	Jan-June 1976
Indictments	858	741	263	774	768	334	1,375	1,173	736
Dispositions	153	469	335	139	447	324	328	819	661
Convictions*	10	42	36	41	120	85	271	843	682

*Conviction charge

Source: New York State Division of Criminal Justice Services.

level to the non-A level, considerable charge reduction still occurs from one level of class A felony to another -- a fact which may be expected to have a significant impact on the average length of sentence imposed in class A convictions under the new laws.

Tables XI and XII, present figures on class A indictments which resulted in convictions during 1974 and 1975. Table XII shows that of all class A-I indictments which resulted in class A convictions during these years, only 19.6% resulted in actual A-I convictions while almost three-fifths led to convictions on A-III charges.

Of all class A indictments which resulted in class A convictions in 1974 and 1975, about 74% were disposed of by guilty plea and about 26% by trial. Table XII presents data on class A indictments which led to convictions as the result of guilty pleas. This Table suggests that extensive charge reduction took place during 1974 and 1975. Over three-fifths of all class A-I indictments disposed of by guilty plea were disposed of as class A-III felonies. Over 86% of class A-II indictments disposed of by guilty plea were disposed of as A-III felonies.

TABLE XI

INDICTMENT CHARGES COMPARED TO CONVICTION CHARGES FOR CLASS A INDICTMENTS LEADING TO CLASS A CONVICTIONS BY BOTH TRIAL AND PLEA, (1974-1975)

Indictment Charge	Conviction Charge A-I	A-II	A-III	Total
A-I	19.6%	24.2%	56.2%	100.0%
A-II	-	29.0	71.0	100.0
A-III	-	-	100.0	100.0
Number of Convictions	52	161	1,114	1,327

TABLE XII

INDICTMENT CHARGES COMPARED TO CONVICTION CHARGES FOR CLASS A INDICTMENTS LEADING TO CLASS A CONVICTIONS BY PLEA, (1974-1975)

Indictment Charge	Conviction Charge A-I	A-II	A-III	Total
A-I	3.1%	31.8%	65.1%	100.0%
A-II	-	13.5	86.5	100.0
A-III	-	-	100.0	100.0

Source: Drug Law Evaluation Project Survey.

In all, 85% of all class A convictions during 1974 and 1975 were convictions on class A-III felonies. This pattern can be expected to have an important impact on the average length of prison terms imposed under the new laws. Defendants convicted of class A-III felonies must serve a minimum prison term of between 1 and 8 1/3 years. Persons convicted of class A-II felonies must serve a minimum term of between 6 and 8 1/3 years, while defendants convicted of class A-I offenses must serve a minimum of between 15 and 25 years. Data from the New York State Department of Correctional Services reveal that, of all defendants convicted and sentenced to prison for class A-III drug felonies in 1974 and 1975, 63% received the minimum prison terms of one year. By comparison, the Project's sample survey shows that, of all defendants convicted and sentenced to prison for A-III felonies as the result of a plea bargain, a similar 59% received the minimum term of one year.* Thus there was no real difference in the likelihood of receiving the minimum term between cases disposed of by plea and by trial.

The data also reveal that, of all defendants convicted and sentenced to prison for class A-III felonies as the result of a guilty plea, those who were originally indicted on an A-I or an A-II felony were just as likely to receive the minimum one year term as those who were originally indicted on an A-III felony. Table XIII presents figures on the minimum

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*The sample showed that 58% of all defendants sentenced to prison under the A-III provisions received terms of 1 year-life. This compares to the New York State Department of Correctional Services' 63%.

TABLE XIII

LENGTH OF PRISON SENTENCES IMPOSED ON DEFENDANTS CONVICTED OF A-III FELONIES BY GUILTY PLEA (1974-1975), BY ORIGINAL INDICTMENT CHARGE

Minimum Sentence Imposed	Original Indictment Charge		
	A-I	A-II	A-III
1 year	53.9%	65.2%	58.5%
1 to 2 years (13 to 24 mos.)	9.8	13.9	18.7
2 to 3 years (25 to 36 mos.)	7.9	16.6	8.8
3 to 15 years (37 to 180 mos.)	28.5	3.7	13.4
No minimum set	0.0	0.6	0.6
Total	100.0%	100.0%*	100.0%
Number of prison sentences	(172)	(183)	(428)

*Differences between the percentage of A-I, A-II and A-III defendants who received one year minimum sentences are not statistically significant. Differences in the average length of sentence imposed on A-I, A-II and A-III defendants are statistically significant. A-I defendants received longer average sentences than A-III defendants. A-III defendants received longer average sentences than A-II defendants.

Source: Drug Law Evaluation Project Survey.

length of prison terms imposed on defendants convicted and sentenced to prison for A-III felonies following a guilty plea. The Table shows that, while defendants originally indicted on A-I felonies were generally more likely to receive longer sentences than defendants indicted on A-II and A-III felonies, they received the minimum one year prison term in 53.9% of the cases. Of those defendants originally indicted on A-II felonies, 65.2% received the one year minimum sentence. Of those defendants originally indicted on A-III felonies, 58.5% were sentenced to the one year minimum term. Since the majority of defendants indicted on class A-I and A-II felonies are allowed to plead to an A-III felony, these figures confirm that plea bargaining in class A cases has had a significant impact on the average length of prison sentences imposed under the new laws.

Sentences in Cases Disposed by Plea and Trial

Under the 1973 laws, plea bargaining of the charge is prohibited for defendants indicted on class A-III felonies. In order to determine whether a defendant indicted on an A-III felony can gain a significant advantage in sentence length by accepting a plea rather than insisting upon a trial, we compared the minimum terms imposed in convictions resulting from trials with the minimum prison terms imposed in convictions resulting from pleas (see Table XIV). We found that in counties outside New York City, defendants who were indicted and convicted of A-III felonies following a guilty plea were generally more likely to receive lower minimum prison terms

TABLE XIV

LENGTH OF SENTENCES IMPOSED ON DEFENDANTS CONVICTED OF A-III FELONIES FOLLOWING INDICTMENTS ON A-III FELONIES (1974-1975) BY METHOD OF DISPOSITION*

Minimum Sentence Imposed	STATEWIDE		NEW YORK CITY		REST OF STATE	
	Plea	Trial	Plea	Trial	Plea	Trial
One Year	55.6%	50.2%	41.8%	60.0%	68.2%	35.6%
One to Two Years (13 - 24 months)	19.2	16.7	28.9	17.1	6.5	15.9
Two to Three Years (25-36 months)	10.5	16.4	4.2	18.1	17.4	13.6
Three to Fifteen Years (37-180 months)	14.1	16.7	23.4	4.8	8.0	34.8
No Minimum Set	0.7	0.0	1.2	0.0	0.0	0.0
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Total Number of Prison Sentences	(428)	(342)	(239)	(210)	(189)	(132)

*Differences between Plea and Trial distributions Statewide are not statistically significant. However, differences within New York City and within the Rest of State, are statistically significant.

Source: Drug Law Evaluation Project Survey.

than defendants convicted after trial. Almost 70% of defendants convicted as the result of a plea received the minimum term of one year, while only 36% of those who were convicted after a trial received the one year minimum sentence. In New York City, however, there was no significant difference between the length of sentence faced by defendants pleading guilty and the length of sentence imposed on those convicted after trial. These findings show, therefore, that at least in counties outside New York City, plea bargaining has a significant impact on the length of prison terms imposed under the new laws even among defendants indicted on class A-III felonies.

Cases Below the Class A Level

While the legislation did not specifically restrict the scope of plea bargaining in cases below the class A level, many observers anticipated that prosecutors would respond to the new laws by limiting plea bargaining in less serious drug cases as well as in new law class A cases. In order to address this question, we examined the extent of charge reduction in old law cases which were the equivalent of new law non-A indictments. We compared only those cases which resulted in convictions as the result of a guilty plea. The figures in Table XV show that there was no significant difference in the extent of charge reduction among old law and new law cases. We also examined patterns of charge reduction in new law class B and class C felony cases. The 1973 legislation made prison sentences mandatory for all defendants convicted of class B and class C drug felonies, with

TABLE XV

CHARGE REDUCTION IN CASES BELOW THE CLASS A LEVEL DISPOSED OF BY GUILTY PLEA*

Number of Steps in the Reduction from Indictment Charge to Conviction Charge**	Old Law Cases Equivalent to New Law Non-A Indictments	New Law Indictments Below the Class A Level
0	14.1%	12.6%
1	22.6	25.8
2	30.9	25.3
3	29.7	34.0
4	2.7	2.3
Total	100.0%	100.0%
Total Convictions by Plea	(5,030)	(2,700)

*Differences in old law and new law distributions are not statistically significant.

**A reduction from a class B indictment to a class C conviction is counted as a one step reduction; a reduction from a class B indictment to a class D conviction is counted as a two step reduction, etc.

Source: Drug Law Evaluation Project Survey.

the exception of offenses involving marijuana. We found that, of all class B and class C indictments which resulted in convictions during 1974, 1975 and the first half of 1976, about 87% resulted in convictions below the class C level. Thus the mandatory sentencing provisions had little meaning in the absence of plea bargaining restrictions.

Pleas and Non-Prison Sentences

A final aspect of the new plea bargaining provisions which requires consideration is their impact on the imprisonment rate for drug offenses. The new provisions were specifically designed to minimize the possibility that a person indicted on a class A felony could avoid a prison sentence on conviction. Table XVI presents figures on the percentage of defendants who were sentenced to prison after being indicted on a class A felony and convicted. The Table compares the percentage of defendants sentenced to prison following a guilty plea with the percentage of defendants sentenced to prison after conviction by trial.

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TABLE XVI

SENTENCES IMPOSED ON DEFENDANTS INDICTED ON CLASS A FELONIES AND CONVICTED (1/1/74 - 6/30/76)

Method of Disposition	Prison	Probation*	Total Convictions
Plea	70.7%	29.3%	1,719
Trial	89.7	10.3	512
Total	75.1%	24.9%	2,231

*Includes 1.7% other non-prison sentences

Source: New York State Division of Criminal Justice Services.

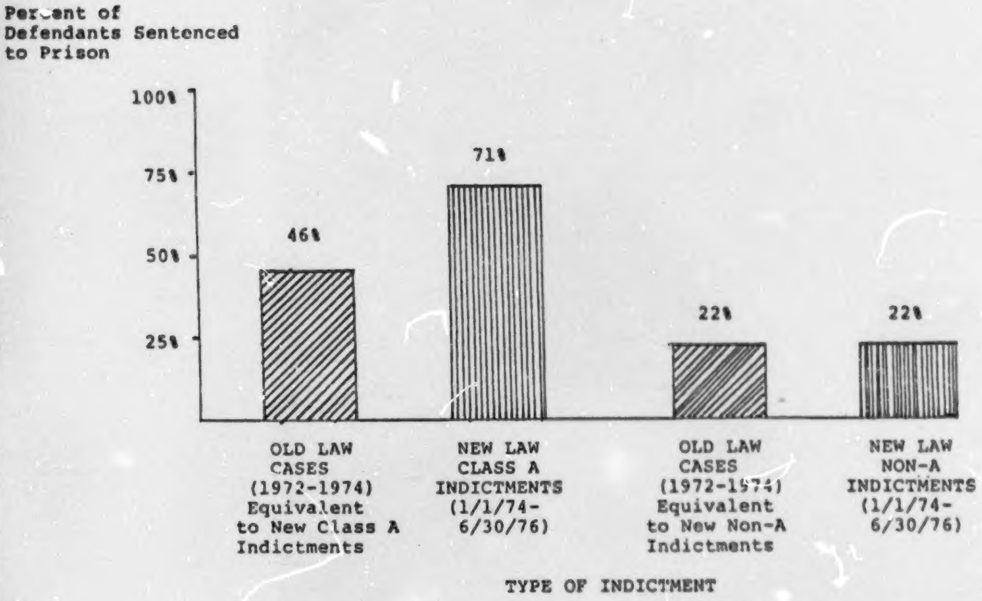
The Table indicates that, of all defendants indicted on class A felonies and convicted after pleading guilty, only about 70% were sentenced to prison. Almost 90% of persons indicted on class A felonies and convicted after a trial, however, were sentenced to prison.

The lifetime probation provision for informants and the Youthful Offender statute, both described above, account for the probation sentences. The figures in Table XVI suggest that, in practice, probation terms might be used as a means of inducing class A defendants to plead guilty. If this is true, class A defendants are still able, in effect, to plea bargain to a charge which will carry a non-prison disposition. Together with the discretion which still exists in setting the minimum prison term in class A cases, therefore, the lifetime probation provision (and possibly the Youthful Offender treatment as well) may act as a source of sentencing discretion which permits plea bargaining to continue in class A dispositions. Whatever the case, defendants convicted of class A felonies as the result of a guilty plea are still able to avoid a prison sentence.

Chart II draws a contrast between the imprisonment rate in new law cases disposed of by guilty plea with the imprisonment rate in old law cases disposed of by guilty plea. All old law cases in the Project's sample were recategorized according to whether they would constitute class A indictments or non-class A indictments under the new laws. The Chart shows that, in old law cases which were the equivalent of new law class A indictments, 46% of the defendants who were

CHART II

PERCENT OF DEFENDANTS SENTENCED TO PRISON FOLLOWING CONVICTION OF DRUG OFFENSES BY GUILTY PLEA ACCORDING TO THE ORIGINAL INDICTMENT CHARGE - NEW YORK STATE (1972 - 1976)



Source: Drug Law Evaluation Project Survey.

convicted as the result of a guilty plea were sentenced to prison and 54% received non-prison sentences. As noted above, the intent of the new plea bargaining provisions was to minimize this last figure. The Chart shows, however, that, of all the defendants indicted on new law class A felonies and convicted as the result of a guilty plea, almost 30% received non-prison sentences.

The Chart also shows that the prison rate for indictments below the class A level was not affected by the new laws, in spite of the fact that prison terms were made mandatory for defendants convicted of class B and class C felonies (except marijuana). As noted above, however, nearly 90% of the defendants who were indicted on class B and class C felonies and convicted under the new laws were convicted of charges below the class C level.

II

CHARACTERISTICS OF OFFENDERS SENTENCED TO PRISON*

A. ARREST HISTORY OF OFFENDERS

Comparisons between prior arrest records of offenders sentenced to prison under the new law and the old reveal that under both sets of laws, the great majority of offenders had previously been arrested for a felony. Approximately two-thirds of all those sentenced to prison under the new laws had prior felony arrests, compared to 75% under the old laws (see Table XVII). Furthermore, 52% of offenders sentenced under the new laws also had prior felony arrests for non-drug crimes.

The likelihood of prison following conviction has increased for virtually all offenders, regardless of prior record (see Table XVIII). First offenders -- defined here as those defendants having no prior felony arrests on their rap sheets -- felt the brunt of the mandatory prison provisions in New York City, but not elsewhere.** As would be expected from the leniency traditionally accorded to first offenders, they have found their chances of going to prison increased most. Recidivists found their chances of going to prison increased as well, but not as much as first offenders. As

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*Information regarding race of offenders is not presented because of the unreliability of classification of Hispanics in New York City.

**Information based on rap sheets understates the number of prior arrests, and also the proportion of defendants having prior arrests.

TABLE XVII

PRIOR ARREST HISTORY OF OFFENDERS SENTENCED TO PRISON, STATEWIDE

Number of prior Felony Arrests	Old Law (Equivalent to new law) (1972-1974)			New Law (1974-1975)		
	A	Non-A	Total	A	Non-A	Total
0	34.5%	19.3%	25.6%	31.5	34.3%	32.4%
1	21.2	23.7	21.7	21.9	22.3	22.0
2	11.3	16.4	15.3	14.3	15.0	14.6
3 or more	33.0	40.6	37.4	32.3	28.4	31.0
Total	100.0%*	100.0%**	100.0%	100.0%	100.0%	100.0%
Number of Sentences	(929)	(3,237)	(4,166)	(1,094)	(572)	(1,666)

* Differences between old law A equivalent and new law A distributions not statistically significant (p less than .05).

**Differences between old law non-A equivalents and new law non-A distribution are statistically significant (X^2=7.8, p less than .05).

Source: Drug Law Evaluation Project Survey.

TABLE XVIII

THE LIKELIHOOD OF PRISON SENTENCES FOLLOWING CONVICTION ON A DRUG CHARGE, BY PRIOR ARREST HISTORY

STATEWIDE

Number of Prior Felony Arrests	Old Law (1972-1974)	New Law (1974-1975)
0	17.8%	23.5%
1	44.4	43.7
2	53.5	67.0
3 or more	64.9	83.9
Total	33.5%	40.0%
Number of Sentences	(4,166)	(1,666)

NEW YORK CITY

Number of Prior Felony Arrests	Old Law (1972-1974)	New Law (1974-1975)
0	14.9%	41.0%
1	44.9	42.8
2	48.2	86.2
3 or more	65.3	80.5
Total	41.8%	55.7%
Number of Sentences	(2,255)	(886)

REST OF STATE

Number of Prior Felony Arrests	Old Law (1972-1974)	New Law (1974-1975)
0	18.7%	16.4%
1	44.1	37.6
2	57.6	50.6
3 or more	64.2	90.6
Total	31.6%	34.3%
Number of Sentences	(1,911)	(780)

Source: Drug Law Evaluation Project Survey.

noted earlier, whatever increase occurred in the prison rate was concentrated on class A offenders.

Table XVII indicates the impact of the increase in the likelihood of prison on distribution of prison sentences. There is virtually no difference in the prior arrest histories of class A offenders sentenced to prison and their equivalents under the old law. In non-class A cases, there has been a large increase in the share of prison sentences going to first offenders, an increase concentrated in New York City. Approximately half of these sentences were to local jails and half to State prisons.

B. THE QUANTITY OF HEROIN INVOLVED IN CASES

As a second measure of the "quality" of offenders sentenced to prison under the new laws, and as a measure of the seriousness of cases under the old and new laws, a comparison was made between the quantity of heroin involved in class A cases which resulted in prison terms under the new laws with the quantity of heroin involved in old law cases which would currently be classified as class A cases. There was virtually no difference between the quantity of drugs involved under the old and new laws (see Table XIX). The data does suggest however, that there has been a shift in emphasis toward quantities exceeding one ounce. This would be consistent with police practice in New York City.

The quantity of drugs involved in a case is the only measure we have of the status of an offender in the drug distribution system. It is a far from perfect measure in individual cases, because, for example, a high level distributor might on occasion deal in very small amounts of drugs. However, there are a large number of cases in

TABLE XIX

QUANTITY OF HEROIN* IN CASES RESULTING IN A PRISON SENTENCE, STATEWIDE

	Old Law (1972-1974)	New Law (1974-1975)
Up to 1/8 oz.	61.2%	62.3%
1/8 - 1 oz	26.2	16.2
1 oz. - 1 lb.	10.8	19.4
Over 1 lb.	1.8	2.1
Total	100.0%	100.0%
Total Sentences	(2,488)	(745)**

*Aggregate weight of a substance including heroin.

**Differences between Old Law and new Law not statistically significant.

Source: Drug Law Evaluation Project Survey.

the sample and a comparison of the distribution of heroin weights may be some indication of the fact that the mix of offenders sentenced to prison under the new laws is roughly the same mix of offenders sentenced to prison under the old laws with respect to their position in the drug distribution system. Under both sets of laws, the largest proportion of cases involved less than one-eighth ounce of heroin.

Offenders involved with small amounts of heroin (less than one-eighth of an ounce) found their chances of going to prison substantially increased under the new laws (see Table XX). Offenders in cases involving higher quantities of drugs also faced greater risk of prison under the new laws, but the increase in these cases was not as substantial as for the cases involving smaller amounts of heroin.

TABLE XX

THE LIKELIHOOD OF A PRISON SENTENCE FOLLOWING A DRUG CONVICTION INVOLVING HEROIN BY QUANTITY OF HEROIN, STATEWIDE

	Old Law (1972-1974)	New Law (1974-1975)
Up to 1/8 oz.	41.0%	87.5%
1/8 - 1 oz.	48.0	66.1
1 oz - 1 lb.	44.0	85.0
Over 1 lb.	75.0	80.0
Total	47.6%	76.8%
Total Sentences	(2,488)	(745)*

*Differences between old law and new law are statistically significant ($X^2 = 6.9$, p less than .05).

Source: Drug Law Evaluation Project Survey

As another measure of the seriousness of drug cases under the old and new laws, the relative frequency of sale and possession cases among old and new law heroin cases was examined. It is commonly assumed that defendants indicted and convicted of sale offenses are the more serious drug offenders, but the relative proportion of sale and possession cases is only a rough indicator of the seriousness of drug cases as a whole. Many of the indictments for sales of heroin, for example, involve relatively small amounts of the drug. Further, there is no assurance that defendants convicted of drug possession are not engaged in marketing the product as well.

It was found that about 76% of old law heroin indictments were sale cases and 24% were possession cases. Among new law heroin indictments, about 70% were sale cases and 30% were possession cases.

Among actual convictions for heroin offenses, however, the proportion of cases involving sale offenses has increased significantly since the new laws took effect. Only 27% of old law heroin convictions involved sale offenses. Under the new law, this proportion rose to 61%. These data suggest that under the old law a large proportion of defendants indicted for sale offenses pled guilty to possession offenses.

C. AGE OF OFFENDERS

Since the intention of the new laws was to increase the likelihood of imprisonment following conviction, and reduce judicial sentencing discretion, those who were the beneficiaries of such discretion, including the young, were expected to be imprisoned more often now than under the old laws. For this reason, age distribution and prison likelihood following convictions for separate age groups were examined.

Fear for the youngest age group of offenders -- 16 through 18 -- proved unfounded (see Tables XXI and XXII).

Increases in the likelihood of going to prison were experienced by all those over 18 years old in New York City and among those over 26 years of age elsewhere in the State.

Neither New York City nor the non-City areas show much change in age distribution among the imprisoned (Table XXI). However, New York City's imprisoned offenders are generally older than those in the out-of-City areas, both for old and new cases.

TABLE XXI

AGE DISTRIBUTION OF OFFENDERS SENTENCED TO PRISON

STATEWIDE

Age Categories	Old Law (1972-1974)	New Law (1974-1975)
16-18	5.8%	6.5%
19-21	20.4	17.2
22-25	31.1	26.9
26 or older	42.7	49.4
Total	100.0%	100.0%*
Number of Sentences	(4,166)	(1,666)

*Differences between old law and new law distributions not statistically significant.

NEW YORK CITY

Age Categories	Old Law (1972-1974)	New Law (1974-1975)
16-18	3.4%	4.4%
19-21	10.2	14.2
22-25	23.8	23.5
26 or older	62.5	57.9
Total	100.0%	100.0%**
Number of Sentences	(2,255)	(886)

**Differences between old law and new law distributions are statistically significant (X^2=8.79, p less than .05).

REST OF STATE

Age Categories	Old Law (1972-1974)	New Law (1974-1975
16-18	7.6%	9.3%
19-21	28.0	21.1
22-25	36.4	31.1
26 or older	28.0	38.5
Total	100.0%	100.0%***
Number of sentences	(1,911)	(780)

***Differences between old law and new law distribution are statistically significant (X^2=6.46, p less than .05).

Source: Drug Law Evaluation Project Survey.

TABLE XXII

THE LIKELIHOOD OF PRISON SENTENCES FOLLOWING CONVICTION ON A DRUG CHARGE, BY AGE

STATEWIDE

Age Categories	Old Law (1972-1974)	New Law (1974-1975)
16-18	18.1%	15.3%
19-21	25.2	24.6
22-25	39.4	42.8
26 or older	51.0	64.4
Total	33.5%	40.0%
Number of Sentences	(4,166)	(1,666)

NEW YORK CITY

Age Categories	Old Law (1972-1974)	New Law (1974-1975)
16-18	31.2%	25.6%
19-21	22.8	44.3
22-25	34.5	53.0
26 or older	54.1	72.8
Total	41.8%	55.7%
Number of Sentences	(2,255)	(886)

REST OF STATE

Age Categories	Old Law (1972-1974)	New Law (1974-1975)
16-18	15.9%	12.3%
19-21	26.0	17.8
22-25	42.3	36.1
26 or older	46.5	52.9
Total	31.6%	34.3%
Number of Sentences	(1,911)	(780)

Source: Drug Law Evaluation Project Survey.

There was only a negligible change in the share of prison terms absorbed by the youngest group. During 1974, the first year of the new laws, very few class A cases were processed, and the percentage of youths sentenced was high because they were concentrated among the less serious offenses. By 1975, however, there was a widespread use of YO probation sentencing provisions for persons 16 through 18, and their share of prison sentences fell despite the rise in class A dispositions.

D. TYPE OF DRUG INVOLVED IN CASES

There were no exceptions, Statewide, to an increase in the likelihood of prison following conviction. All drugs shared in the increase (see Table XXIII). The decline in the likelihood of prison in methadone cases in New York City and in cocaine cases elsewhere represent only a small share of all drug cases in these jurisdictions (see Table XXV).

A surprising finding is that heroin cases declined in importance under the new laws relative to other drugs (Table XXIV). In New York City, the relative importance of cocaine has grown, while upstate, cannabis has increased in importance. The laws classify all cannabis cases below the class A level.

Most cannabis cases result, however, in sentences to local jail rather than to State prison (between 60% and 70% under both old and new laws). When State prison sentences alone are considered, the importance of heroin has not declined from old law levels.

TABLE XXIII

THE LIKELIHOOD OF PRISON SENTENCES FOLLOWING CONVICTION ON A DRUG CHARGE, BY TYPE OF DRUG

STATEWIDE

Drug	Old Law (1972-1974)	New Law (1974-1975)
Heroin	47.6%	76.8%
Methadone	36.0	43.6
Cocaine	51.8	72.0
Marijuana/ Hashish	16.1	16.5
Other*	4.0	3.4
Total Likelihood	33.5%	40.0%
Total Sentences	(4,166)	(1,666)

NEW YORK CITY

Drug	Old Law (1972-1974)	New Law (1974-1975)
Heroin	44.9%	74.4%
Methadone	49.8	33.5
Cocaine	47.6	78.1
Marijuana/ Hashish	8.7	13.5
Other*	15.0	3.0
Total Likelihood	41.8%	55.7%
Total Sentences	(2,255)	(889)

REST OF STATE

Drug	Old Law (1972-1974)	New Law (1974-1975)
Heroin	50.6%	60.6%
Methadone	21.6	91.9
Cocaine	65.4	50.1
Marijuana/ Hashish	17.1	16.9
Other*	5.0	4.8
Total Likelihood	31.6%	34.3%
Total Sentences	(1,911)	(780)

*Other includes: Stimulants; Depressants; Hallucinogens.

Source: Drug Law Evaluation Project Survey.

TABLE XXIV

TYPE OF DRUG IN CASES RESULTING IN A PRISON SENTENCE

STATEWIDE*

Drug	Old Law (1972-1974)	New Law (1974-1975)
Heroin	56.4%	45.4%
Methadone	2.4	5.8
Cocaine	14.9	23.7
Marijuana/ Hashish	14.2	19.0
Other**	12.1	6.1
Total	100.0%	100.0%
Number of Sentences	(4,166)	(1,666)

*Differences between old law and new law distributions are statistically significant (X^2=19.9, p less than .05).

NEW YORK CITY*

Drug	Old Law (1972-1974)	New Law (1974-1975)
Heroin	65.2%	50.0%
Methadone	4.0	6.6
Cocaine	24.5	35.9
Marijuana/ Hashish	2.2	3.6
Other**	4.1	3.9
Total	100.0%	100.0%
Number of Sentences	(2,255)	(886)

*Differences between old law and new law heroin and cocaine are statistically significant (x^2=8.79, p less than .05).

REST OF STATE*

Drug	Old Law (1972-1974)	New Law (1974-1975)
Heroin	49.7%	39.4%
Methadone	1.3	4.8
Cocaine	7.6	8.2
Marijuana/ Hashish	23.3	38.6
Other**	18.1	9.0
Total	100.0%	100.0%
Number of Sentences	(1,911)	(780)

*Difference between old law and new law for heroin and Marijuana are statistically significant (X^2=6.46, p less than .05).

**Includes: Stimulants; Depressants; Hallucinogens.

Source: Drug Law Evaluation Project Survey.

Appendix

Sample Design and Method

The data collected by the Drug Law Evaluation Project for this Report included a randomly sampled survey of 1,625 cases with a drug indictment as the most serious charge which resulted in a drug conviction and a sentence in New York State Superior Courts between January 1, 1972 and December 31, 1975. Seven distinct groups of convictions were sampled. Table B-I shows the number of defendants in each group who were convicted and sentenced and the sample size for each of these groups.

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TABLE B-I

NUMBER OF DEFENDANTS CONVICTED AND SENTENCED AND SURVEY SAMPLE SIZES

	Total Number of Defendants Convicted and Sentenced	Sample Size
Old Law Convictions		
1972	5,907	269
1973	4,762	257
1974	1,614	249
New Law Convictions		
1974		
Class A	322	227
Non-Class A	1,098	202
1975		
Class A	1,005	189
Non-Class A	1,736	232
Total	16,444	1,625

Source: New York State Division of Criminal Justice Services.

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Sources of Data

For new law cases, the New York State Division of Criminal Justice Services supplied the Project with a list, arranged by county, of indictments in which a defendant was convicted of any drug offense during 1974 and 1975. From this list, the appropriate number of cases were randomly selected within each county. The actual data gathered for the survey were collected by field workers, from the individual case files maintained by each county, by either the county clerk or court clerk, district attorney, or probation department. Because not all of the data could be obtained from a single source, records were searched in the offices of judicial administrators, district attorneys, and probation directors in each of the 28 counties surveyed. In five of the counties, all three offices were visited, and in 18 others two of the three sources of data were utilized.

Old law cases were selected differently because no Statewide list of indictments resulting in drug convictions could be obtained for 1972 and 1973. A list was available for old law cases carried over into 1974. Project staff developed the sample in each county using random selection procedures adapted to fit the different record-keeping system of each county.

Scope and Limitations of the Sample

While as wide a base of cases as possible was desired, the time required to sample cases from all 62 counties of the State, as well as the cost of such an undertaking, prevented a full Statewide sample. As an alternative, 24 of the 26 counties in which defendants had been convicted of a class A felony during 1974 and 1975 were selected. Four additional counties that could be easily reached geographically in the course of collecting the data were also selected. In each of the 28 counties, including the five New York City counties, a random sample of convictions was drawn for all seven groups (or as many of the groups in which there were convictions).

The inclusion of only 28 of the State's 62 counties does not present a serious bias to the results. The 28 counties accounted for approximately 90% of the State's drug convictions under the old laws, and 85% of the new law convictions. Further, aggregate data were made available by the Division of Criminal Justice Services on the likelihood of prison sentences issued to defendants convicted of drug offenses in each county during 1972. These showed no difference between the proportion of defendants sent to prison in the 23 sampled non-New York City counties and the 34 upstate counties not sampled. Thus, the selection of only some counties was considered representative of all counties.

One actual source of bias was confronted in the selection of cases. This concerned the sealing of court records in which defendants were adjudicated as Youthful Offenders (Y.O.). About two-thirds of those eligible were so adjudicated. Where court docketing material was relied upon to derive the case sample, Youthful Offender cases could not be obtained. However, when sources other than court records were used to generate the sample, it was possible to include Youthful Offenders in the survey. The impact of this bias on the Statewide data is statistically small. In most of the larger counties of the State, information about defendants found to be Youthful Offenders was available, accounting for the magnitude of Y.O.'s. In addition, not all defendants eligible for Youthful Offender treatment are adjudicated as Youthful Offenders. Records for these offenders were available on the same basis as adult offenders. To examine the size of the bias, the age distribution of all the sample cases was compared to the age distribution of cases from those counties in which Youthful Offender records were available. Only small and statistically insignificant changes in the age distribution were found.

Statistical Presentation

The number of cases selected for each of the seven sampling groups (about 200) was determined as the minimum needed to statistically test for Statewide differences between the characteristics of defendants. In addition, limited comparisons on other dimensions were possible. For example, New York City counties were compared to upstate counties. Because of this sampling design, it was not possible to perform statistical tests for all conceivable differences between the characteristics of defendants. Whenever appropriate, though, the chi-square (X^2) and student t-test techniques were employed, using a .05 level of significance to identify differences in the data. All tests were two-tailed.

The numbers presented in this report are either estimates of the Statewide population based on the sample percentages or actual figures based on information from the New York State Division of Criminal Justice Services.

Reclassification of Old Law Offenses

In order to draw comparisons between old and new law drug cases, all old law cases in the sample were reclassified as "new law equivalents" to determine whether they would constitute class A or non-A cases, both for indictments and convictions, under the new laws. In many cases, a simple mapping was possible from an old law indictment or conviction penal law article to the new law A or non-A equivalent.* In other cases, information on the type and weight of drug involved, and offense (sale or possession) in addition to the indictment or conviction article had to be taken into account in accomplishing a reclassification. Missing data, primarily weight of drug, prevented reclassification of 8% of old law cases.

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*See Rosenblatt, Albert M., New York's New Drug Laws and Sentencing Statutes, (Law Journal Press: New Yor, 1973), pp. 17-39.

APPENDIX

APPENDIX

The 1973 New York State Drug Law

The 1973 drug law was enacted as Chapters 276, 277, 278, 676, and 1051 of the 1973 Laws of New York State. Significant subsequent amendments are contained in Chapters 785 and 832 of the 1975 Laws and Chapter 480 of the 1976 Laws.

The 1973 Drug Law and Its Context

New York State law divides crimes into seven classifications, five felony and two misdemeanor, ranging from class A felony, the most serious, to class B misdemeanor, the least serious. The 1973 law divided the class A felony category into three subclassifications, A-I, A-II, and A-III. Classes A-II and A-III were created especially and exclusively for drug crimes.

TABLE A-1

CRIME CLASSIFICATION AND SELECTED EXAMPLES UNDER NEW YORK STATE PENAL LAW

Classification	Drug Crime Example	Non-Drug Crime Example
A-I Felony	Sale of 1 oz. of heroin	Murder 1° and 2°
A-II Felony	Sale of between 1/8 oz. and 1 oz. of heroin	None
A-III Felony	Sale of less than 1/8 oz. of heroin	None
B Felony	Second offender, class C drug crime	Rape 1°, Robbery 1°
C Felony	Possession of 1/2 oz. of methamphetamine	Assault 1°, Burglary 2°
D Felony	Sale of any amount of any controlled substance	Grand Larceny 2°, Forgery 2°
E Felony	None	Perjury 2°, Criminal Contempt 1°
A Misdemeanor	Possession of any amount of any controlled substance	Unauthorized use of a Vehicle
B Misdemeanor	None	Menacing

Sentencing possibilities are provided for each classification of crime. Under the 1973 law, indeterminate sentences to State prison were made mandatory for convicted class A and B felons. Certain class C and D crimes also carried mandatory indeterminate sentences. An indeterminate

TABLE A-2

FIRST OFFENDER PENALTIES FOR CLASSES OF CRIME UNDER NEW YORK STATE PENAL LAW

(as of June 1977)

	INDETERMINATE SENTENCE TO STATE PRISON		
Classification	**Minimum**	**Maximum**	**Alternatives to a State Prison Sentence[a]**
A-I Felony	15-25 yrs.	Life	None[b]
A-II Felony	6-8 1/3 yrs.	Life	None
A-III Felony	1-8 1/3 yrs.	Life	None[c]
B Felony	1-8 1/3 yrs.	3-25 yrs.	None
C Felony	1-5 yrs.	3-15 yrs.	Probation (5 yrs.), conditional discharge, unconditional discharge[d,e,f,g]
D Felony	1-2 1/3 yrs.	3-7 yrs.	Probation (5 yrs.), local jail (1 yr.), intermittent imprisonment (1 yr.), conditional discharge, unconditional discharge[e,f,g]
E Felony	1-1 1/3 yrs.	3-4 yrs.	Probation (5 yrs.), local jail (1 yr.), intermittent imprisonment, conditional discharge, unconditional discharge[e,f,g]
A Misdemeanor	None	None	Local jail (1 yr.), intermittent imprisonment, probation (3 yrs.), conditional discharge, unconditional discharge[f,g,h]
B Misdemeanor	None	None	Local jail (3 months), intermittent imprisonment, probation (1 yr.), conditional discharge, unconditional discharge[f,g]

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[a] Excluding fines.

[b] Murder in the first degree (of a police officer under particular circumstances) is a class A-I felony that carries a mandatory death sentence.

[c] But informants who aid in the investigation or prosecution of a drug felony may be sentenced to lifetime probation.

[d] Defendants indicted for class A-III felonies who plead guilty to a class C felony, as authorized by the 1976 amendment to the law, may receive a local jail sentence of up to one year instead of an indeterminate sentence to State imprisonment.

[e] No alternative is available for defendants convicted of certain specified class C and class D felonies. Conditional discharge and unconditional discharge are not available to defendants convicted of drug felonies.

[f] Offenders who are adjudicated Youthful Offenders may not receive a State prison sentence with a maximum of more than four years.

[g] Offenders who have been found to be narcotics addicts under the procedures set forth in the New York State Mental Hygiene Law must receive either a probation sentence requiring treatment for their addiction or a sentence to either State prison or local jail.

[h] Offenders who are adjudicated Youthful Offenders in a local criminal court and who have not previously been so adjudicated or convicted of a crime may not receive a definite sentence of more than six months.

sentence means that the actual length of time the convicted felon will spend incarcerated is not established by the court. Typically, the sentencing judge chooses a maximum term, the longest time the defendant may be incarcerated, from the range of maxima provided by law. The parole board then sets the minimum term, the period during which the convicted felon is not eligible for parole, and subsequently decides the actual term after the minimum term has been served. However, in class A felony cases (and in predicate felony cases discussed below), the sentencing judge must set the minimum as well as the maximum term. In other felony cases, a sentencing judge may set a minimum term of up to one-third of the maximum he has set, provided he specifies his reason for doing so in the court record.

The 1973 law instituted an important difference between the lifetime maximum sentence required for class A drug felonies and the lifetime maximum mandated for other class A felonies. Both drug and non-drug class A felons are eligible for release from prison on parole after serving the minimum sentence set by the court. Non-drug class A felons are then eligible for release from parole supervision after five years of successfully living under this supervision. The 1973 drug law provided, however, that class A drug felons could never be discharged from parole supervision. Class A drug lifetime sentences were thus truly for the life of the convicted felon.

Drug Crime Under the 1973 Law

The 1973 law reclassified most drug crimes as more serious offenses than they had been before. In this reclassification, illustrated in Table A-3, the new law made detailed distinctions among various substances and amounts possessed or sold. A complete list of drug crimes under the 1973 law is presented in Table A-4.

TABLE A-3

Reclassification of Selected Drug Crimes Under the 1973 Law

Crime	Old Law Classification	New Law Classification
Sale of 1 oz. heroin	C Felony	A-I Felony
Sale of 1/8-1 oz. heroin	C Felony	A-II Felony
Sale of less than 1/8 oz. heroin	C Felony	A-III Felony
Sale of 5 mg. LSD	D Felony	A-II Felony
Possession of 5.25 mg. LSD	A Misdemeanor	A-III Felony
Possession of 2 oz. methamphetamine	A Misdemeanor	C Felony

TABLE A-4

CONTROLLED SUBSTANCE (DRUG) CRIMES UNDER 1973 NEW YORK STATE DRUG LAW

					INDETERMINATE SENTENCE TO STATE PRISON	
Class	**Unlawful sale of**	**Amount**	**Unlawful possession of**	**Amount**	**Minimum**	**Maximum**
A-I Felony	Narcotic drug	1 oz. or more	Narcotic drug	2 oz. or more	15-25 years	Life[b]
	Methadone[a]	2880 mg. or more	Methadone[a]	5760 mg. or more		
A-II Felony	Narcotic drug	1/8 oz. up to 1 oz.	Narcotic drug	1 oz. up to 2 oz.	6-8 1/3 years	Life[b]
	Methadone[a]	360 mg. up to 2880 mg.	Methadone[a]	2880 up to 5760 mg.		
	Methamphetamine	1/2 oz. or more	Methamphetamine	2 oz. or more		
	Stimulant	5 gm. or more	Stimulant	10 gm. or more		
	LSD	5 mg. or more	LSD	25 mg. or more		
	Hallucinogen	125 mg. or more	Hallucinogen	625 mg. or more		
	Hallucinogenic substance	5 gm. or more	Hallucinogenic substance	25 gm. or more		
A-III Felony	Narcotic drug	Up to 1/8 oz.	Narcotic drug with intent to sell	Any amount	1-8 1/3 years	Life[c]
	Methamphetamine	1/8 oz. up to 1/2 oz.	Methamphetamine with intent to sell	1/8 oz. or more		
	Stimulant	1 gm. up to 5 gm.	Stimulant with intent to sell	1 gm. or more		
	LSD	1 mg. up to 5 mg.	LSD with intent to sell	1 mg. or more		
	Hallucinogen	25 mg. up to 125 mg.	Hallucinogen with intent to sell	25 mg. or more		
	Hallucinogenic substance	1 gm. up to 5 gm.	Hallucinogenic substance	1 gm. or more		
	Any amount of a stimulant, hallucinogen, hallucinogenic substance, or LSD after a previous conviction for a drug offense		Stimulant	5 gm. up to 10 gm.		
			LSD	5 mg. up to 25 mg.		
			Hallucinogen	125 mg. up to 625 mg.		
			Hallucinogenic substance	5 gm. up to 25 mg.		

TABLE A-4 (continued)

CONTROLLED SUBSTANCE (DRUG) CRIMES UNDER 1973 NEW YORK STATE DRUG LAW

Class	Unlawful sale of	Amount	Unlawful possession of	Amount	INDETERMINATE SENTENCE TO STATE PRISON	
					Minimum	Maximum
A-III Felony (cont.)			Any amount of a stimulant, hallucinogen, hallucinogenic substance or LSD with intent to sell after a previous conviction for a drug offense		1-8 1/3 years	Life[c]
B Felony	Narcotic preparation to a person under 21	Any amount	A class C felony possession crime charted below (with the exception of marijuana and methadone[a]) after a prior conviction for a class C felony possession crime charted below (with the exception of marijuana and methadone[a])		4 1/2 - 12 1/2 years	9 - 25[d] years
	A class C felony sale crime charted below (with the exception of marijuana and methadone[a]) after a prior conviction for a class C felony sale crime charted below (with the exception of marijuana and methadone[a])					
C Felony	Narcotic preparation	Any amount	Narcotic drug	1/8 oz. up to 1 oz.	1-5 years	3-15 years[c]
	Dangerous depressant	10 oz. or more	Narcotic preparation	2 oz. or more		
	Depressant	2 lbs. or more	Methadone[a]	360 mg. up to 2880 mg.		
	Marijuana	Any amount	Methamphetamine	1/2 oz. up to 2 oz.		
	Methadone[a]	Up to 360 mg.	Stimulant	1 gm. up to 5 gm.		
			LSD	1 mg. up to 5 mg.		
			Hallucinogen	25 mg. up to 125 mg.		
			Hallucinogenic substance	1 gm. up to 5 gm.		
			Dangerous depressant	10 oz. or more		
			Depressant	2 lbs. or more		
			Marijuana	1 oz. or more, or 100 or more cigarettes		

TABLE A-4 (continued)

CONTROLLED SUBSTANCE (DRUG) CRIMES UNDER 1973 NEW YORK STATE DRUG LAW

Class	Unlawful sale of	Amount	Unlawful possession of	Amount	Indeterminate Sentence to State Prison	
					Minimum	Maximum
D Felony	Any drug	Any amount	Any drug with intent to sell Narcotic preparation Marijuana	Any amount 1/2 oz. or more 1/4 oz. or more, or 25 or more cigarettes	1-2 1/3 years	3-7 years[f]
E Felony	No drug offenses in this category.					
A misdemeanor	No drug offenses in this category.		Any drug	Any amount	Up to 1 year local jail[g]	
B misdemeanor	No drug offenses in this category.					

[a] Classification of methadone effective August 9, 1975. Prior to that date methadone was classified as a narcotic drug.

[b] An indeterminate sentence to State prison is mandatory. Defendants indicted for these crimes may not plead guilty to less than a class A-III felony.

[c] An indeterminate sentence to State prison is mandatory with two exceptions: (1) informants may receive a sentence of lifetime probation, (2) defendants 16 through 18 years of age may be treated as Youthful Offenders (effective August 9, 1975). Since July 1, 1976 defendants indicted for these crimes may plead guilty to a class C felony and receive a local jail sentence of up to one year instead of an indeterminate sentence to State prison.

[d] An indeterminate sentence to State prison is mandatory. However, plea bargaining is unrestricted for defendants indicted for class B felonies, unless the defendant has a predicate felony record.

[e] An indeterminate sentence to State prison is mandatory, except for marijuana and methadone crime (see footnote a) and except for defendants who are originally indicted for class A-III felonies and who plead guilty to this class of felony (see footnote c). However, plea bargaining is unrestricted for defendants indicted for class C felonies unless the defendant has a predicate felony record.

[f] An indeterminate sentence to State prison is *not* mandatory. Plea bargaining is unrestricted for defendants indicted for class D felonies unless the defendant has a predicate felony record.

[g] A jail sentence is not mandatory.

Mandatory indeterminate State prison sentences were provided for class A and B drug felonies, and for class C drug felonies except those involving marijuana. To assure that the mandated sentences would be imposed on class A offenders, plea bargaining was limited for defendants indicted for class A crimes. They were not permitted to plead guilty to a crime for which a State prison sentence was not mandated. In 1976, the law was amended to permit defendants indicted for class A-III felonies to plead down to as low a charge as a class C felony. Those defendants who pleaded down from class A-III crime to a class C crime faced mandatory incarceration, but an alternative to an indeterminate State prison sentence was provided by the amendment: up to one year in a local jail.

TABLE A-5

PLEA BARGAINING POSSIBILITIES FOR INDICTED DRUG DEFENDANTS UNDER THE 1973 LAW

Indictment Charge	Lowest Permissible Guilty Plea For First Offender	Least Restrictive Sentence with Lowest Permissible Plea
A-I Felony	A-III Felony	State imprisonment, 1 yr. to life
A-II Felony	A-III Felony	State imprisonment, 1 yr. to life
A-III Felony	A-III Felony, prior to 7/1/77	State imprisonment, 1 yr. to life
	C Felony, after 6/30/77	Local jail, 1 day
B Felony	Unrestricted	Unconditional discharge
C Felony	Unrestricted	Unconditional discharge
D Felony	Unrestricted	Unconditional discharge

Recidivism Under the 1973 Law

The 1973 law contained two types of provision governing recidivism. Certain drug crimes were reclassified as more serious felonies if they were second or subsequent offenses. For example, possession of one milligram of LSD was made a class C felony, but if the defendant charged with possessing this amount of LSD had previously been convicted of a drug offense, the charge became a class A-III felony.

The second type of recidivism provision, the second felony offender or predicate felony provision, was much wider in scope. A defendant indicted for any felony crime (drug or non-drug) who had a prior felony conviction was not permitted to plead down to a misdemeanor charge, and if convicted became a second felony offender. (A predicate felony conviction is one for which sentence was passed within ten years of the alleged commission of the new felony. Any period of incarceration served by the defendant for the predicate felony conviction is not counted when calculating this ten year period.)

A second felony offender faced a mandatory State imprisonment sentence with specified minimum and maximum periods greater than those for first offenders. Since class A felony convictions required the imposition of a lifetime indeterminate sentence, the second felony offender provision of the 1973 law was not made applicable to class A cases.

TABLE A-6

PREDICATE FELONY PLEA BARGAINING AND SENTENCING UNDER THE 1973 LAW

Indictment Charge	MANDATORY INDETERMINATE SENTENCE		Lowest Permissible Plea
	Minimum	Maximum	
B Felony	4 1/2-12 1/2 yrs.	9-25 yrs.	E Felony
C Felony	3-7 1/2 yrs.	6-15 yrs.	E Felony
D Felony	2-3 1/2 yrs.	4-7 yrs.	E Felony
E Felony	1 1/2-2 yrs.	3-4 yrs.	E Felony

GLOSSARY

Acquittal. A verdict by a judge or jury, after a trial, finding that the defendant has not been proven guilty of the crime with which he has been charged.

Addiction, drug. In this study, a physiological dependence on a drug, produced by regular use of that drug, such that the user undergoes withdrawal symptoms if he stops using it.

Arraignment. The occasion on which a defendant in a criminal case first appears before a judge: the defendant is informed of the charge against him, bail is set, and future proceedings are scheduled. In a felony case, there may be two arraignments: one in the lower criminal court, and one in the superior court after indictment.

Bag. The common package of heroin for sale on the street ("retail" level). A bag generally contains 0.1 gram of a substance containing some heroin. The amount of heroin in a bag can vary considerably.

Bail. The financial security given by a defendant to guarantee that he will appear in court when required. There are two types, cash bail and bail bond, and the judge may direct the amount and type to be posted.

Certification, civil (of narcotic addicts). A procedure by which individuals who are found to be narcotic addicts under the New York State Mental Hygiene Law are committed to the care and custody of the New York State Office of Drug Abuse Services for treatment.

Controlled substance. See Drug.

Conviction. The entry of a plea of guilty by a defendant, or a verdict of guilty by a judge or jury against a defendant.

Conviction rate. The proportion of indictments which are disposed of by conviction, as opposed to acquittal or dismissal, in a specified time period.

Court, lower criminal. One of the two types of criminal court in New York State (the other is superior court): the New York City Criminal Court, or a district, city, town or village court in jurisdictions outside New York City. A local criminal court has jurisdiction to try misdemeanor cases, and to process felony cases up to the point of indictment.

Court, superior. One of the two types of criminal court in New York State (the other is lower criminal court): the Supreme Court in New York City, and usually the county court in jurisdictions outside New York City. A superior court has jurisdiction to try felony cases.

CRIME. An offense against the law. The two categories of crime in New York State are FELONY and MISDEMEANOR.

CRIME, DRUG. The illegal sale of, possession of, or possession with intent to sell any drug.

CRIME, DRUG-RELATED. In this Report, the non-drug felonies committed by drug users. The most numerous felonies in this group are robbery, burglary, and grand larceny.

CRIME, NON-DRUG. All crimes *except* drug crimes.

DEFENDANT-INDICTMENT. A unit of count used to measure the inflow of cases into a superior court. It is a summation of all defendants indicted and all indictments processed as follows: (1) When several defendants are named in one proceeding or indictment, each defendant is counted separately. (2) When one defendant is named in multiple proceedings or indictments, each indictment is counted separately.

DISMISSAL. A decision by a judge to discontinue a case without a determination of guilt or innocence. Dismissals may be of two types: a "merit dismissal" is a decision to discontinue a case on such grounds as insufficient evidence against the defendant; a "non-merit" dismissal is a decision to discontinue a case for such reasons as the consolidation of an indictment with another indictment pending against the same defendant.

DISMISSAL RATE. The proportion of indictments (or lower court filings) disposed of by dismissal, as opposed to conviction or acquittal, in a specified time period.

DISPOSITION. Any final action of the superior court on an indictment, including conviction, acquittal, or dismissal. As used in this Report, disposition does not include consolidation or abatement of actions against defendants.

DISPOSITION RATE. The ratio of court dispositions to new indictments during a specified time period, ususally expressed in percentage terms. The ratio may be less than or greater than 100%, according to whether the pending caseload is growing or shrinking.

DRUG. A controlled substance, that is, any substance listed in Schedules I through V of Section 3306 of the New York State Public Health Law. The 1973 drug law uses several terms for particular groups of drugs:

(1) Narcotic drug: includes heroin, morphine, opium, and cocaine. Included methadone until August 9, 1975.

(2) Narcotic preparation: includes codeine, morphine and opium mixtures that have therapeutic uses.

(3) Hallucinogen: includes psilocybin, and tetrahydrocannabinols other than marijuana.

(4) Hallucinogenic substance: includes mescaline and certain forms of amphetamine.

(5) Stimulant: includes most amphetamines.

(6) Dangerous depressant: includes barbiturates and methaqualone.

(7) Depressant: includes diazepan (Valium), chlordiazepoxide (Librium), and meprobamate (Miltown, Equanil).

DRUG ADDICTION. See ADDICTION, DRUG.

DRUG-FREE TREATMENT. Treatment of drug users relying on counseling, group therapy, and work.

DRUG USE. In this study, any regular or frequent use of drugs without medical supervision; drug users include both addicted and non-addicted users. POLY-DRUG is the regular or frequent use of two or more drugs, often including alcohol.

DRUG, ILLICIT. Any drug used in violation of a statute.

DRUGS, NARCOTIC. Opium and opium alkaloids and their derivatives such as heroin, morphine, and codeine; and synthetic analgesics such as demerol and methadone. These drugs produce physiological and psychological dependence in the regular user. The 1973 drug law defined narcotic drugs to include cocaine but not (since August 9, 1975) methadone.

DRUGS, NON-NARCOTIC. A wide range of drugs, including barbiturates and hallucinogens. As used in this Report, the term "non-narcotic drugs" does not include marijuana or hashish.

FELONY. The more serious of the two categories of crime under New York law (the less serious is misdemeanor). After initial processing in lower criminal court, a felony is prosecuted by indictment in a superior court.

GRAND JURY. A body of between 16 and 23 people which hears and examines evidence concerning criminal offenses. Only a grand jury may return an indictment.

HEPATITIS, DRUG-RELATED. Types of hepatitis associated with intravenous drug use. Any of the three types (infectious type A, serum or type B, and "type unspecified ") may be associated with intravenous drug use.

HEPATITIS, SERUM. A form of hepatitis often transmitted through contaminated hypodermic needles, and thus associated with intravenous drug (usually heroin) use. Also known as "hepatitis type B."

Imprisonment. Incarceration in a State prison, as opposed to local jail.

Imprisonment, intermittent. A sentence of incarceration up to one year in length. Typically, the offender spends weekdays at his regular employment and weekends in jail. Intermittent imprisonment is a discretionary sentence for first offenders convicted of many class D felonies and all class E felonies, as well as for all offenders convicted of misdemeanors.

Imprisonment rate. The proportion of convictions resulting in sentences to State prison or local jail.

Indictment. A written accusation by a Grand Jury charging a person with a crime. Indictments are used generally only in felony cases. An indictment forms the basis for prosecution in a superior court.

Indictment rate. The proportion of felony arrests that results in indictment.

Jail. As distinguished from a State prison, a local institution to which offenders are committed for a sentence that is both of definite length and of a duration of one year or less.

Methadone maintenance. A form of treatment for chronic heroin users which involves daily administration of methadone to clients in clinics licensed by State and/or Federal governments.

Misdemeanor. The less serious of the two categories of crime under New York law (the more serious is felony). Misdemeanors are punishable by a definite sentence to jail of up to one year.

Narcotic. See Drugs, narcotic.

Narcotics-related deaths. Deaths attributable to an overdose of narcotic drugs, usually as determined by a coroner or medical examiner. Does not include suicides, homicides, or accidental deaths in which narcotics are found.

Offender. An individual convicted of a crime (as opposed to a defendant, who has been accused but not convicted).

Opiate. A group of narcotic drugs derived from opium. See Drugs, narcotic.

Parole. (1)Release of an institutionalized inmate serving a State prison sentence after he has served his minimum sentence (after which the parolee lives in the community under the supervision of a parole officer); or (2) release on recognizance during the pendancy of a criminal proceeding in a court. See Recognizance.

Plea bargaining. The exchange of prosecutorial and/or judicial concessions (commonly a lesser charge, the dismissal of other pending charges, a recommendation by the prosecutor for a reduced sentence, or a combination thereof) for a plea of guilty by the defendant.

PLEAD DOWN. To plead guilty to a lesser charge. See PLEA BARGAINING.

POLY-DRUG USE. See DRUG USE.

PREDICATE FELONY. A prior felony conviction for an individual offender for which sentence was passed within ten years of the commission or alleged commission of a new felony. Time spent incarcerated because of the prior felony is not counted when calculating this ten-year period. Under the 1973 law, indicted defendants with a predicate felony record could not plead down to a misdemeanor. If a defendant with a predicate felony record were convicted of a felony, he was a "second felony offender," and subject to mandatory State imprisonment.

PRISON, STATE. A correctional facility operated by the New York State Department of Correctional Services for the confinement of persons under sentence of imprisonment. Persons receiving an indeterminate sentence after conviction for a felony are committed to State prisons. State prison is distinguished from JAIL.

PROBATION. A sentence of a court imposed on a convicted defendant, in lieu of incarceration, requiring him to comply with conditions specified by the court. Such conditions may be any the sentencing judge deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him in doing so. Probation sentences for a convicted narcotic addict may include a requirement that he undergo up to one year of treatment and rehabilitation in an inpatient treatment program. Compliance with conditions set is supervised by the offender's probation officer.

RECOGNIZANCE, RELEASE ON. Release of a defendant during the pendancy of a criminal proceeding without requirement of any form of guarantee (bail) other than the defendant's agreement that he will return to court when required.

SENTENCE, DEFINITE. A sentence to jail. Definite sentences may be up to one year in length. Defendants convicted of certain class C, D, and E felonies or of misdemeanors may receive a definite sentence.

SENTENCE, INDETERMINATE. A sentence to State prison for a felony. The sentencing judge sets the maximum length of time the offender can spend in prison, and in some cases also sets the minimum term, i.e., a period of parole ineligibility. In other cases, the parole board sets the minimum term. In all cases where an indeterminate sentence is imposed, the actual term of imprisonment is decided by the parole board. That term must lie between the minimum and maximum terms.

SUBSTANCE, CONTROLLED. See DRUG.

TRIAL. The examination of issues of fact and law in a case following a plea of not guilty by a defendant. A trial is completed when a verdict of guilty or of acquittal is reached, either by a jury (jury trial) or by a judge (bench trial).

TRIAL RATE. The proportion of indictments (or lower court filings) which are disposed of by trial, rather than by guilty plea or dismissal.

YOUTHFUL OFFENDER. A legal category that may be assigned to a person charged with a crime alleged to have been committed when he was at least 16 years old, but younger than 19. During the prosecution of a defendant who is eligible to be designated a Youthful Offender, court records are held confidential from the public and the public may be excluded from attendance at court proceedings against him. After conviction, a Youthful Offender finding may be substituted for the full-fledged conviction, and, if so, the offender may not receive an indeterminate sentence of four years or more. In addition, all official records relating to the case (police and court records) are sealed and become confidential. Under State law prior to August 9, 1975, persons charged with class A felonies were not eligible for Youthful Offender treatment. After August 8, 1975, persons charged with class A-III felonies were made eligible. In the First Judicial Department (New York and Bronx counties in New York City), persons charged with any class A felony became eligible for this treatment as a result of a court decision in 1974.

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